A

DIGEST

OF

HINDU LAW,

ON

CONTRACTS AND SUCCESSIONS:

WITH A

COMMENTARY

BY JAGANNAT'HA TERCAPANCHÁNANA.

TRANSLATED FROM THE ORIGINAL SANSCRIT,

BY H. T. COLEBROOKE, ESQ.,

JUDGE OF MIRZAPORE, RESIDENT AT THE COURT OF BERAR,
AND MEMBER OF THE SOCIETY INSTITUTED IN BENGAL FOR INQUIRING INTO
THE HISTORY, ANTIQUITIES, THE ARTS, SCIENCES
AND LITERATURE OF ASIA.

THIRD EDITION,

CAREFULLY REVISED.

COMPLETE IN TWO VOLUMES.

VOLUME II.

LONDON:
1801.

MADRAS:
J. HIGGINBOTHAM, MOUNT ROAD.
LEPAGE AND CO., CALCUTTA.
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RE-PRINTED AT THE ASYLUM PRESS, BY WM. THOMAS.

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CHAP. I.

ON THE NON-PAYMENT OF WAGES OR HIRE.

Sect. I.—*On Servants and others bound to Obedience.*

I.

Vrĭhaspati:—Unalienable *property*, and other *titles of gift*, have been fully declared: the rules for Servants are now delivered; and, first, is propounded, the title of Promised Obedience;

2. Next, Non-payment of *wages or* hire; and, lastly, Disputes between master and herdsman in *their* order. This is the triple distinction of Servants.

This topic of *persons* promising obedience, and of *such as are* disobedient, is a title of law. The *Chintámeni*.

Unalienable property, and other *titles of gift*, (what may or may not be given, and what is or is not a valid gift,) have been fully declared; next in order the law respecting Servants is delivered. What relates to him who promises obedience, but yields it not, is a title of law, as disobedience and so forth: that is first propounded; the cases are decided with penalties, as specified in their proper place. "Next, non-payment of wages;" or withholding the hire of labour: afterwards, the disputes between master and herdsman are declared in order: this *distinction*, of *dependent* bound to obedience, of *hireling* receiving wages, of servant (such as herdsman) differently maintained, forms the triple distinction of servants. Such is the sense *of the text;* consequently, the rules respecting them, together with the contests between master and herdsman, form a single title of law, according to Vrĭhaspati.

But other lawyers, finding in the *Retnácara* a different reading of the text of Vrĭhaspati, *Aśuśrúshábhyupétya*, instead of *Suśrúshám abhyupaitya*,) say, that the title of Judicial Procedure is named *Aśuśrúshábhyupétya*, a

compound in which the last word is the subject, "disobedience of him who has promised *obedience*;" for it is similar to the compound *Rájadanta*, king of teeth, by the rule of Cramadíswaráchárya; "in some other instances also *the subject is* placed last." Náreda likewise so *denominates this title of law*.

II.

Náreda:—When a man yields not the obedience he has promised, it is called a breach of promised obedience, which is a title of law.

Literally, that man who, promising obedience, yields it not, is named by the forensick term of "not obedient as *he had* promised;" or his breach of duty is a title of judicial procedure called (*Aśuśrúshábhyupétya*), disobedience of him who has promised observance: consequently, the apposition *gives this sense*, "his title of law is," instead of "it is a title of law." They thus explain the last verse (I 2), "the distinct rules respecting servants, (under the heads of breach of promised obedience, non-payment of wages or hire, and disputes between master and herdsman,) form the triple distinction of laws respecting servants and wages."

The title of law respecting him who, promising obedience (or compliance with commands), afterwards yields it not, is called (*abhyupétyáśuśrushá*) promise and disobedience. The *Mitácshará*.

In fact, the words do not form a compound: consequently the sense of Vrihaspati's text is, "the promise and disobedience are first propounded; and thereon rests a double *subject of* contest." He mentions it, "wages, &c." non-payment of wages, and disputes between master and servant, are delivered in their order: "this, which will be mentioned, is the triple distinction of servants;" namely labourer, slave, and herdsman. The sense of Náreda's text is the same: neither is there any *needless* repetition; for in the first hemistich the title of law is not named. Nor is there any thing superfluous in it; for it is stated by way of example: the first hemistich describes the person implied by the name assigned in the second; and it is intended to exclude accidental disobedience. The text should be thus interpreted:

III.

Náreda describes servants:—Persons bound to obedience are in law declared by the learned to be of five kinds; four are servants or labourers; the rest, namely the slaves, are *of* fifteen *sorts*.

But in the *Mitácshará* it is read; "among those the slaves are fifteen."* The sense is, persons bound to obedience are servants of five kinds; four are labourers; the other, called slave, is of thrice five, or fifteen *sorts*. Vijnyánéswara, Váchespati Misra, and others, so *explain the text*.

IV.

Vrihaspati:—They are declared to be of many sorts, according to class and work; and four-fold for science, for human knowledge, for love, or for pay.

2. Of these again, each is distinguished according to the difference of work.

* *Teshám*, instead of '*Séshàh*.

They (servants) are declared to be of many sorts. How? According to class and work; according to the distinction of tribes and of labour. He mentions the distinctions of work; "science, &c." "Science;" knowledge of the *Védas* and the like. "Human knowledge;" skill in arts and the like, explained in the Dictionary of AMERA, arts and ordinances, *or human sciences*. "Love;" *becoming a servant* through the influence of love. "Pay," *literally* wealth; that is, money or goods. According to the distinction of labour for these causes, servants are discriminated; these four kinds are again distinguished according to the difference of work: all this will be explained.

V.

NÁREDA:—A pupil, an apprentice, a hired servant, and fourthly a commissioned servant, perform work; slaves are those born *of a female slave* in the house, or the like.

"A pupil" is one who seeks *the acquisition of* science; an apprentice seeks *the acquisition of* skill in arts; a hireling and a commissioned servant both seek pay. A servant "for love" is a slave of a particular description; the other slaves are similar to servants for pay. Thus the sense is the same as in *the text of* VRĬHASPATI.

VI.

NÁREDA:*—The wise have declared their general dependence.

Here some explain dependence, or not being their own masters, as denoting that they are incapable of acquiring wealth for themselves. But others hold their dependence to mean subjection to a master; consequently the sense is, they commit a sin, and shall be punished as is proper, if they act without, or against, their master's commands: but there is no ordinance showing universally the property of their masters in what is acquired by them; but where and when it is shown by the law that slaves or others are incapable of property, even there and then what they acquire becomes the property of their masters: and this mention of dependence is intended to determine contests respecting the independence of master and servant, or of teacher and pupil.

VII.

NÁREDA notices the distinction *of servants* by class:—He is called a labourer by class, and has a distinct subsistence.

The meaning is, whatever be the servant's class, he should perform the work of it; and his subsistence *and abode* should *also* be regulated by his class. For instance, the use of arms, and a habitation in the best place, for a *Cshatriya;* clearing forests and the like, and a habitation in the worst place, for the lowest *Súdra*.

VIII.

VRĬHASPATI describes the pupil:—The triple science is declared to be the *Rĭch*, *Yajush*, and *Sáma-védas;* for these let him pay obedience to a spiritual teacher, as directed by the law.

The *Rĭch* and other *Védas* are mentioned generally, comprehending the *At'harva-véda* and the like. "The obedience directed, or prescribed, by the

* Not named in the original, but the texts which precede and follow this are delivered as NÁREDA's; and it seems to be implied that this also is quoted from the same authority.

law;" consequently, though it be not specified, obedience is necessary; and he who yields it not, may be reproved or chastised by the teacher, and the preceptor offends not. For the sake of science, obedience to an instructor must also be yielded by others than a *Brahmana; for they study ordinances, or human sciences.* This must also be understood.

IX.

NÁREDA:—Until he acquire the science, let the pupil diligently obey his preceptor; his conduct should be the same towards the preceptor's wife and his son:

2. *Afterwards*, performing the stated ceremonies on his return home, and giving to his instructor the gratuity of a teacher, let him return to his own house. This conduct is prescribed to the pupil.

By this a pupil is declared to be a servant. The *Retnácara.*

Here the punishment of a pupil, if he do not yield obedience, is not ordained: hence, since it is not here directed, no amercement is *paid* to the king.

X.

Smriti:—But in case of strife between teacher and pupil, father and son, husband and wife, or master and servant, their mutual litigation is not legal.

By this, judicial procedure, *in such cases,* is not forbidden;* but MENU declares that punishment may be inflicted by the teacher (XI). It appears that, if it could not be borne, the acquisition of science would be prevented.

XI.

MENU:—A wife, a son, a servant, a pupil, and a younger whole brother, may be corrected, when they commit faults, with a rope, or the small shoot of a cane;†

2. But on the back part only of their bodies, and not on a noble part by any means.

"Performing the stated ceremonies on his return home" (IX); performing the *Samávarttana* sacrifice, and giving the teacher's gratuity, for the sake of *obtaining* perfect fruit from his own act *of studying*, let him return home to *assume* the order of a householder, *or married man.* Such is the sense of the text (IX 2).

A pupil is mentioned under *this* title of law, to determine the rules respecting chastisement of a pupil by a teacher, and so forth.

XII.

GÓTAMA:—The correction of a pupil for ignorance or incapacity *should be given* with a small rope or shoot of a cane; the teacher shall be punished by the king, if he strike with any other instrument.

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* I suspect the negative to be an error of the manuscript.

† May I quote a maxim of no less authority? *Setáparádhair anitám pushpénápi na tá'dyet;* strike not, even with a blossom, *a wife* guilty of a hundred faults.

VIJNYÁNÉSWARA says; if a teacher, from an impulse of wrath, strike *his pupil* with a great staff on a noble part, then should the pupil, hurt in a mode contrary to law, complain to the king; there exists a subject of litigation.

If it be said, that this contradicts the text cited (X), VIJNYÁNÉSWARA replies; it is not intended to forbid important suit son the part of pupils and the like, for in some instances their suits are admitted: but the litigation of teachers and the rest is not laudable, either in a moral or civil view; therefore pupils and others should, in the first instance, be discouraged by the king or the court: this is the implied sense of the verse (X). But, in very important cases, the suits of pupils and the rest may be entertained in the form mentioned.

But others hold, that the suit of a teacher against his pupil, a father against his son, a master against his servant, and, by parity of reasoning, a husband against his wife, is not legal, because the pupils and the rest are dependent on their teachers and so forth, and may be punished by them: the text (X) shows this very *rule*, and does not forbid the suit of a pupils and the rest against a teacher and so forth; for GÓTAMA directs, that a preceptor, ill treating his scholar shall be punished (XII). The text in question (X) signifies, that the pupil should proceed, *in other matters*, with the previous knowledge of his teacher. The meaning is, that a suit preferred before the king is irregular; and, preferred by the teacher against his pupil, is forbidden. But if the pupil, or son, violate his duty, and the teacher, or father, being weak, is not able to correct him, it is consistent with common sense that he should then apply to the king; for, by violating his duty, the pupil, or son, absolutely becomes *páshenda*, *or* irreligious.* This they *also* hold.

The suit of a teacher, if his gratuity be not paid, is not mentioned by any other *author*; but hell is *the pupil's fate*, if he pay not a gratuity *to his instructor* (Book II, Chap. III, v. 34).

From the text *already cited* (IX 2) *it appears, that* so long, (*until the stated ceremonies be performed*,) obedience is required, and the pupil is dependent on the teacher (v. VI, and Book II, Chap. IV, v. XV 2). Therefore he should not go any where, nor consume any thing, without his preceptor's orders; and what he acquires by labour, should be delivered to the teacher.

XIII.

YÁJNYAWALCYA:—When called, let him study; and deliver what is gained to him (namely to the teacher).

What is given by him, may be consumed; what is acquired by labour, may not be given to another: but, if *either* paternal wealth, or property acquired *by the pupil* during his minority, be given away, unknown to the teacher, or notwithstanding his prohibition, it is *nevertheless* a valid gift; but there is offence in violating the prohibition.

Let him deliver what is gained to the teacher (XIII): this is a moral ordinance; for it is placed under that head. Consequently, duty is violated if it be not delivered to the teacher; but he cannot forcibly take it: and since the pupil is the owner of that property, even what is then received as

* Literally, taking the marks of the four orders (as explained in AMERA's Dictionary); but otherwise explained in this work (Chap. II).

alms may, if the scholar give it away, be a legal donation. If this be alleged, they say, the same rule is established in this case as in that of learning arts (XX); the pupil is like a slave to his preceptor, and during that period *of tutelage* is every way dependent. But according to JÍMÚTAVÁHANA and others, it should be affirmed, that what is then acquired by labour, if it be given away, becomes a valid gift; for *the case* is similar to *that of* a wife and the rest.

The pupil must also perform other labour in his preceptor's house.

XIV.

YÁJNYAWALCYA:—Let him constantly promote his *teacher's* benefit, by *every exertion of* mind, speech, body, and action.

And such practice is shown, in many instances, in the *Mahábhárata* and other *works*.

XV.

YÁJNYAWALCYA:—Those who are endowed with memory, and who are void of malice, intelligent, pure, and auspicious, should be legally instructed, that they may be just, able, acquainted with what is good, and learned.

From this direction it should be deduced, that a pupil, endued with such qualities, and free from such defects, having undertaken to study, cannot properly be abandoned without a fault.

VIJNYÁNÉSWARA says, *treating* of the pupil, apprentice, hireling, and commissioned servant, the conduct of the pupil has been first propounded by the text *already quoted* (XIII).

XVI.

VRÍHASPATI describes an apprentice:—Arts, consisting *of work in* gold, husbandry, and the like, and *the art of* dancing and the rest, are called human sciences; let him who studies these, perform work in his teacher's house.

In the expression "gold, husbandry, and the like," are comprehended *work in* wood, traffic, and the rest. Dancing and the like include singing and so forth. In the *Chintámeni* the text is read, "arts, *as* the manufacture of vessels of gold and the like, *and the art of* dancing and so forth, are called, &c." In fact, skill in business which requires study, but is different from *sacred* science, is *human* knowledge. This sense results *from the text.* He should perform, in the house of his preceptor or teacher, work relative to the art to be learned by him; as the manufacture of golden vessels, and the like, in the house of an instructor who works in gold; not *labour* of a different nature, as the thatching of a house and the like.

XVII.

NÁREDA:—Let him who wishes to acquire his own art, with the assent of his kinsmen, reside near an instructor, fixing a well-ascertained period *of apprenticeship.*

2. Let the teacher instruct him, giving him a maintenance in his own house; and not employ him in other work, but treat him as a son.

"To acquire his own art;" the art suitable to his class. "A time or period ascertained" by the attestation of witnesses. "Not other work," but *that which is proper* for instruction in the art. The *Retnácara.*

"Let him reside near his teacher" *(ácháryasya vaséd anté)*: by this is expressed the derivation of apprentice (*antévásí*), or pupil for *instruction in arts.* "Giving him a maintenance;" *the compound term may be explained,* to whom subsistence is given. The teacher himself must allow a maintenance to his pupil: his own benefit is the *performance of a* duty, reputation *gained,* and some profit. In some places of the *Retnácara,* the reading is, "giving hire;" still a subsistence is meant by the word "hire."

In like manner, if a pupil for *the study of* the *Védas* need a maintenance, it is proper that the teacher should give it. It is not mentioned in the law, because moral duty alone is the principal consideration of a student in the *Védas*: yet it should be done, for otherwise duty is violated.

"But treat him as a son" (XVII); not, like a slave, employ him at pleasure.

XVIII.

Cátyáyana directs a penalty for employing *an apprentice* in other work:—He who does not instruct *his scholar* in the art, and causes *him* to perform other work, shall incur the first amercement; and the pupil is therefore released.

"He who does not instruct his apprentice in the art;" the teacher who, having promised instructions, but either employing the scholar much in other work, or acting from the impulse of wrath, does not teach him the art, shall incur the first amercement: and the pupil may forsake him, and go to another teacher.

Then, how is he required to perform work (XVI)? Some reply, it is not forbidden to require obedience from him: but it is forbidden to employ him in business inconsistent with instruction and occupying much time; such as travelling to many places, thatching a house, and the like. But others hold, that work, in the text of **Vrĭhaspati** (XVI) intends the business which is to be learned; it corresponds with the text, "the profit of whatever work he may there perform" (XX); and he should be employed in such labour. But if the teacher instruct him to the best of his knowledge, and do not employ him in other work, then the pupil forsaking his teacher, and going to another, shall be chastised.

XIX.

Náreda:—But he who deserts his teacher, though instructing him and not culpable, shall be compelled by forcible means to reside *with him,* and is liable to stripes and confinement.

"*Corporal punishment,*" blows and the like; "confinement," or restraint: so a certain author *has explained the terms.* The *Retnácara.*

"Confinement;" binding. The *Chintámeni.*

For the loss of life (*the literal sense of the first term*) would be incongruous. This is considered. The teacher should himself inflict the stripes or other punishment, according to law; not on a noble part by any means (XI 2), but with a small rope or shoot of a cane (XII). The same chastisement is proper for desertion and for ignorance. The spiritual preceptor and pupil are similar to the teacher and apprentice, but are distinguished by the difference of *their* motives: the pupil studies the *Véda* on account of duty; the apprentice learns an art for the sake of wealth. Thus some *interpret the law.*

Others hold, that a pupil may be punished by the teacher, if the pupillage were undertaken with the assent of kinsmen; for he has not tutorage, unless apprenticeship were agreed to: and here a lawsuit arises, on application made to the king.

But, in fact, *it appears* from the mention of the assent of kinsmen, *that* the pupillage lasts so long as the kinsmen do not withdraw *the boy*; *in the mean time* correction *may be given* by the teacher: but if his kinsmen withdraw him, a suit may be maintained; and if the pupil have no kinsmen, *still* it is inferred that a lawsuit may arise on account of desertion.

If, through an aptitude to learn, the pupil become perfectly instructed in his art before the expiration of his apprenticeship, he shall nevertheless serve his master the full time.

XX.

NÁREDA:—Though he have learned *his art*, the apprentice must fulfil his stipulated time; and the profit of his labour during that period shall belong to his teacher.

"Stipulated time;" the period agreed to. "The profit of his labour;" wages or hire, and the like. The *Retnácara.*

The hire receiveable, by the favour of the teacher, during the period of instruction; in that the pupil has certainly ownership.

XXI.

YÁJNYAWALCYA:—Though he have acquired his art, the apprentice must reside in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the fruit *of his art.*

The apprentice must reside in his teacher's house during the stipulated period; that is, so long a time as was agreed to: *for instance;* "I will reside in thy house four years, to study the art of medicine." *If such an agreement* were *made,* even though he have gained the requisite knowledge before the expiration of four years, still he must reside *there.* How shall he reside *there?* The answer is; receiving subsistence from his teacher, and applying to his benefit the fruit of those instructions *he receives from him.* He must so reside *in his teacher's house.* The *Mitácshará.*

Here, *it should seem,* from the expression "the profit of his labour," &c. (XX), that the teacher has ownership even in what the pupil acquires by voluntary *exertion in* traffic and the like, independent of his art, and by agriculture or similar means, and by treasure-trove or other *accident.* It cannot be said that it may belong to his father, under the texts *cited in a former chapter* (Book II, Chap. IV. v. 56), because there are no grounds

for selecting *one rule in preference to the other*. His kinsmen have assented to his apprenticeship (XVII); and, according to law, it is the duty of an apprentice to acquire wealth for his teacher. Nor should it be said, that the work *meant* (XX) is limited, by the title *under which the text is placed*, to the business to be learned. There is no authority for such a limited construction. Thus some *expound the law*.

But others allege, as a custom, that the fruit of what is *done* through the means of the teacher, (*in consequence of instructions*,) belongs to him; but, in the case of treasure-trove or the like, the waif is taken by the pupil. According to JÍMÚTAVÁHANA, the pupil has, in every instance, a right to *retain* what is acquired by himself: this should be considered.

XXII.

NÁREDA:—At the *expiration of the* period, the apprentice, having acquired his art, and formally delivering to the teacher the best reward in his power, departs with *his* permission.

"Having acquired his art:" this intimates that if the art could not be learned in the time first stipulated, he should stay, again fixing a period *of further apprenticeship*; not that he should stay until the study be completed within the time first stipulated. For the stipulated period is shown to be *the* principal *consideration*, by directing the apprentice to fulfil his time even though he have learned *his art* (XX).

When the time, or stipulated period, is expired, *the apprentice departs*, having presented a gratuity to the teacher, *after formally* walking round him; and this is done as a token of respect: obtaining his approbation to the best of his power; giving the best reward in his power, and obtaining *his instructor's* approbation; or doing that which is the best reward for the teacher. "To the best of his power" refers to the reward.*

This (*the apprentice*) is the second labourer, *a servant* for human knowledge (IV). A servant for love is included among slaves, and will be *hereafter* mentioned. NÁREDA describes the third labourer by the name of hired servant.

XXIII.

NÁREDA:—Labourers should be considered as of three sorts; highest, middle, and low: the hire of their labour should be proportioned to their strength and to the benefit *derived from their exertions*.

2. A soldier is the highest of these; a servant in husbandry is middlemost; a carrier of burdens is lowest: this is the three-fold distinction of hired servant.

"*Bhacti*," benefit. "Hire of their labour;" the wages fixed for their labour. The *Retnácara*.

Consequently wages should be given according to the strength of the servant, according to the work effected, and so forth: for instance, one *hired leader*, by his own exertion, repels a hundred hostile armies; another repels one foreign army: their wages should be proportioned to their power. "Benefit;" particular effect of service, explained by the Sage himself: "a soldier is the highest of these." Or, *it may mean that* soldiers should be

* The last remark has guided the translation.

distinguished according to their principal or inferior charge; as the soldier posted in the rear. So, in regard to the man who thatches the house, or who collects the grass or the like: their wages should be paid according to their work.

XXIV.

VRĬHASPATI:—The servant for pay is declared to be of many sorts; another is the servant for a share *of the gain.* Of all, a low, a middle, and a high rank is propounded.

2. A servant hired for a day, a month, a fortnight, six months, or a year, must perform the work engaged for: and he receives the promised *reward.*

3. The soldier is the highest of these; the ploughman is the middlemost; the porter is declared the lowest, and so is a servant employed in the business of the household.

4. A servant of the second description is declared to be one hired for a share *of the gain*, in the service of a person living by agriculture, or by *attendance on* herds *of cattle:* no doubt he shall receive *a share* of the grain produced, or of the milk.

The servant for pay is of many sorts or descriptions; a hireling, an agent, and the like: another servant for pay is called a labourer for a share *of the gain.* These are the servants for pay mentioned by VRĬHASPATI in a former text (IV); for the labourer for a share of the produce is a servant for pay *given* in the form of a share. Of all the servants for pay, except the labourer for a share, a low, a middle, and a high rank is declared: this has been *also* mentioned by NÁREDA (XXIII), and shall be explained.

He who undertakes service for one day, is a servant for a day. So a servant for a month. "Half," *in the text,* signifies half a month, *or a fortnight;* a servant for half a month *or a fortnight:* so a servant for six months, and a servant for a year. "Each must perform the work engaged for:" he must perform that very work which the person stipulated when he hired *him as* a servant, and not any other work. Thus, hired on a stipulation for bringing water, he need not carry burdens, nor bring wood from the forest; but, hired on a stipulation for bringing fuel from the forest, he must fetch wood. In case of dispute, it must be determined by the *tenor of the* compact. But if they mutually consent *to other employment*, then every thing is proper by mutual agreement; no suit can be maintained at a subsequent time, for the party has himself previously consented. But if a porter, hired to fetch wood from the forest, finds imminent danger to his life in that *employment*, he has a right to quit it, notwithstanding his previous agreement. If he undertook it, knowing the great risk of life, and afterwards, again hearing of the danger, or not hearing of it, recede, what is the rule in that case? In the case of imminent danger the employer cannot compel him, if he refuse to abide by his agreement. But this rule is not applicable to soldiers and the like; for their employment is connected with risk of life. This should be considered as consistent with reason.

"He receives the promised wages" (XXIV 2): when he stipulates less or more wages than are given by people in general for the same work, the

stipulated hire is received under the authority of the text. If he stipulate more or less wages than are proportioned to the work, that very hire should be received. But an agreement for less or greater wages, unintentionally made, either by deceit through false promises, *or extorted* by force or the like, is not valid, as stipulated interest, not specially and freely promised by the debtor, need not be paid (Book I, v. XXXVII). This should be admitted, and is necessary: but greater favour depends on the will of the master.

Of these servants for pay, the soldier is the highest *in rank* (XXIV 3). This is not exclusive; for, it is proper also to consider a person skilled in accounts as included among servants of the first rank. A ploughman and servant in husbandry are ultimately the same: nor is this exclusive; for an architect and others are entitled to a place in the second rank. "A porter, &c." (XXIV 3): this is similar, since there are *other* servants declared equal to him: "and so is a servant employed in the business of the household" (XXIV 2), bringing things for the use of the household and the like: he who performs these various offices is also a servant of the lowest rank; and others are also comprehended in the mode pointed out. Nor does it derogate from NÁREDA, that he has not mentioned the servant employed in the business of the household.

"Another is the servant for a share of the gain:" what is thus mentioned (XXIV 1), separates two titles. The servant to whom food and vesture are given, and the labourer to whom *a share of the* gain is delivered, form the double title, as will be mentioned (LXVII): and that labourer for a share is declared to be the servant of persons living by agriculture, or by herds *of cattle*. This again is general; there may be servants hired for a share *of the gain* by persons subsisting by *the manufacture of* cloths and the like, *as* weavers and others; and by persons subsisting by flocks of goats, *sheep*, and the like. A servant for participation is one hired for the consideration of a share. This sense of the word the Sage announces: "the servant hired for a share of gain, in the service of a person living by agriculture, shall receive *a portion* of the grain produced; and in the service of a person living by herds *of cattle, shall receive a share* of the milk;" here "share" must be supplied, according to the *Retnácara*. What share? It will be mentioned in another place.

A commissioned servant is included by VRÍHASPATI among servants for pay. In regard to him also, the rule of high and low rank is to be understood according to the circumstances of the case. But NÁREDA describes him as the fourth labourer, and different from the hireling.

XXV.

NÁREDA:—He who shall be commissioned for affairs, or for the superintendence of the family, should be considered as a commissioned servant; and he is *also* called a family-servant *in some instances*.

"*Things;*" affairs. These two *servants* are named, in judicial procedure, commissioner and family servant. The *Retnácara*.

The sense is, "commissioned" by the king, or other person, for affairs, such as the protection of the subjects, the receipt of his revenue, or the maintaining of an army for war, and so forth; and by others also, for collecting the produce of the soil, or for the management of commodities bought or the like. The same should be understood of one appointed *to act*

for his principal in a law-suit. "Commissioned" over the family is obvious, though not mentioned by him (*by the author of the* Retnácara): he who is appointed to provide the food and clothing of the family is a commissioned servant. "These two;" commissioned for affairs, and commissioned for the family: such is the meaning *of the gloss*.

Are they synonymously or severally named commissioner and family-servant? Not the first; since commissioned for affairs would be the accepted sense of the term family-servant. Nor should it be affirmed that this must be admitted on *the authority of* the text, for it may be otherwise applied: and it is directed, at the time of affixing a meaning to a word, not to admit a sense by acceptation, when the derivative sense can be *used*.

A Rule of Philosophy:—An accepted sense, being once admitted, excludes the derivative sense; but, when proposed, it is inadmissible if the derivative sense oppose it.

Nor should it be said, that here should be admitted a secondary sense without losing the literal signification, for that cannot be received unless there be some objection to the obvious meaning. Thus, "he," in the expression "he should be considered as a commissioned servant," being applicable to the officer commissioned for affairs, and to the servant commissioned for the family, both comprehended under this term *used* in the singular number, commissioner is a name for each of them; "and he," the servant commissioned for the family, as is obviously meant, is called a family-servant. This may be the sense of the text.

Nor *is* the second *construction admissible, that* "*one is a commissioned servant; the other, a family-servant.*" For the servants commissioned for the family, excluded from the name of commissioner, would be excluded from the subdivision *of the subject, as proposed in former texts* (III and V).

On this point it is said a secondary sense must be here partially admitted, and both be comprehended even under the term family-servant. Where the word cannot be pertinent without a secondary sense, such a meaning must be affixed; *but*, how is it inserted in the text for that purpose? In the expression "the cowpen is situated on the Ganges," and in similar instances, the word Ganges being explained in the secondary sense of its shore, the *Ganges*, or stream of water in the tract of BHAGIRAT'HA's car, is not included with the shore signified by the word Ganges. This argument is wrong; for the term is here employed in a secondary sense, without losing the literal signification. This is meant in the *Retnácara*, and should be considered as accurate: hence it is said, "*so named* in judicial procedure."

XXVI.

NÁREDA:—Four servants are declared to be those who perform pure work; but they who do impure work are the slaves of fifteen sorts, *some properly so called, others improperly.**

2. Work is declared to be of two sorts, impure and pure: impure work is assigned to the slave; pure work, to the servant.

* This observation is added from Sir W. JONES's translation of the text, as cited in the *Vivádárnava setu*, where it is attributed to VRIHASPATI.

"Four servants;" a pupil, an apprentice, a hired servant, and a commissioner.

"To the servant;" to the pupil and the rest of four servants.

The *Retnácara.*

"Those who perform pure work:" consequently the pupil and the rest should not be employed in cleaning the house and the like. It appears from the ordinance, that even a hired servant should not perform that task. But if any person, allured by temporary hire, be willing to do such work, for one who has no slave, and who is himself unable to perform it, may he be so employed? or should he be included in some one of the descriptions which will be given of slaves of fifteen sorts? He who consents to do the work of a slave, must perform it: in this instance there is no fault on the part of the master. Then, why has this text been propounded? When servants are not willing to do the work of a slave, then their master may not forcibly compel them: but when slaves refuse to perform that work, he may compel those *slaves* by forcible means. The text should be considered as propounded for this purpose.

XXVII.

VRĬHASPATI:*—Cleaning the house, the gate-way, the necessary, and the road, removing the dirt and rubbish, and all other impurities,

2. Attending the master at his pleasure, and rubbing his limbs, are to be considered as impure work; and all other work as pure.†

Though it be said in this text that all other work is pure, yet there is no exclusion of other *work not specified.*

XXVIII.

CÁTYÁYANA:—The sons of slaves must absolutely do the work of removing urine and ordure, attending their naked master, and handling cows and the like.

The *supposed* limitation in the preceding text is done away by the additional mention of attending a naked master and handling cows and the like: and it is confirmed, that the customary office of removing the dirt of the body and the like is comprehended *in the texts.* However applied, the rule is not infringed, since the texts are intended only as examples.

"Attendance on the naked master;" handling clothes to him.

The *Retnácara.*

"Attendance on the naked master;" rubbing his limbs while naked.

The *Párijáta.*

Both interpretations should be admitted, for they are proper. But, on the explanation given in the *Párijáta,* naked is unmeaning; for, no other than a slave rubs the limbs of a master, though he be not naked.

Some remark, that, on a thorough examination of the texts, *it appears that,* where a person is hired, the performance of pure work constitutes a servant, and the performance of impure work constitutes a slave; and a hired

* The authority is not named: but in the *Arnava setu,* and in the *Vivâda Chintâmeni* it immediately follows the texts there attributed to VRĬHASPATI, and here cited as NÁREDA'S.

† I omit the gloss on this text, which is indelicate. The text itself is translated freely.

servant, doing the impure work described by the text, should be considered as a slave. Others hold, that slavery depends on the particular relation of property; and service, solely on the engagement of the servant. If it be said, there is authority even over a servant; *they answer*, this authority is not a cause of similar dependence; it is the relation of command, *not of property*. Nor should it be objected, that a similar relation may extend also to a wife or a son. For they are distinguished; or that is barred by the epithet of servant: and many do not admit the hire of slaves. As for *making* the admitted difference of dependence to constitute slavery, they deny it; for it would not extend to slaves born in the house, and so forth.

These four servants are called persons bound to obedience. NÁREDA now explains the slave, or fifth description of persons bound to obedience.

XXIX.

NÁREDA:—One born *of a female slave* in the house *of her master*, one bought, one received *by donation*, one inherited *from ancestors*, one maintained in a famine, one pledged by a *former* master,

2. One relieved from great debt, one made captive in war, *a slave* won in a stake, one *who has* offered *himself* in this form "I am thine," an apostate from religious mendicity, *a slave for a* stipulated *time*,

3. One maintained in consideration of service, a slave for the sake of his bride, and one self-sold, are fifteen slaves declared by the law.

"Born in the house;" born of a female slave in the house *of her master*. "Bought" for a price. "Received;" or acquired, by the acceptance of donation and the like. "Inherited;" a slave of the father, or other ancestor, passing by succession to the son or other *heir*. "Maintained in a famine;" in a season not good, at a time when provisions are dear, or, *in other words*, during a dearth; then maintained: that is, whose life has been preserved for servitude by food *then* given. "Pledge by a master;" his own slave pledged by the master to a creditor, for a loan received, *to be* his slave during the period of the loan. "Relieved from great debt;" redeemed from his creditor's custody on account of a great debt, and therefore becoming a slave. "Made captive in war;" *one whose* life has been preserved by *his* consenting to slavery, when in danger of *his* life in battle; *and thus* acquired by the conqueror. "Won in a stake;" overcome after an agreement in this form, "if I be overcome in this contest, I am thy slave." Who has offered himself in this form, "I am thine;" delivering himself in this form, "I am thy slave," through desire of money or the like. "An apostate from religious mendicity;" quitting the state of a mendicant. "Stipulated;" *slave* for a stipulated time; who has fixed a period in this form, "I am thy slave for so long a term;" and so forth. "Self-sold;" who has sold himself. These slaves of fifteen sorts are declared by NÁREDA. The text is thus explained according to VIJNYÁNÉSWARA, CHANDÉSWARA, VÁCHESPATI, and BHAVADÉVA.

"Won in a stake;" won by gaming.

The *Pracása and Párijáta.*

"Bought" and "received" *may* also *mean boys* purchased or received for adoption, *but who have* become slaves through some failure in the form prescribed by the law. In that instance, "received" signifies given by the father and mother; and he who is self-given, is one who has offered himself

in this form, "I am thine:" he will be mentioned by this *description.* "Maintained in a famine;" and who has consented to slavery: but of him who has not consented to become a slave. the servitude is not admitted by VIJNYÁNÉSWARA; for he particularly mentions consent *as a requisite condition:* and that is proper, since there is no proof of dominion acquired by maintenance alone. Yet persons bought, or received, may become slaves, although they did not consent to it at the time; for they are in subjection, and cannot *now* become sons *after a failure in the forms of adoption.*

If it be said, they should become servants; else a *Bráhmana* might become a slave, though his class be exempted from slavery: therefore persons bought, or received, if they have not consented to become slaves, should not perform *impure work*, such as attendance on their naked master and the like: The answer is, the slavery of a boy, who has consented to adoption, being admitted by a text cited in Part II (Book V, v. CLXXXII) if the rites of *adoption* be not duly performed, servitude in general does really occur also in the case of persons bought or received, *if the adoption fail.* In fact, since he is taken for adoption, he should perform the office of a son; but he becomes a slave if he be excluded (*in consequence of a failure in the adoption*) from the rites ordained by the *Véda*, such as obsequies or the like. This is proper.

"Pledged by his master" (XXXI): but, he who receives a loan on pledging himself is of the same description; and he is a slave, if he have agreed to it for subsistence: but not otherwise, *for* he is a servant if he have agreed to service *only*.

"Relieved" from debt: this occurs in redemption from a debt due to another, and in remission of a debt due to *the master* himself, in consideration of the debtor's becoming a slave; but a purchase results from the remission of a debt due to the master himself. However, it is so explained by authors. "Relieved from great debt" *comprehends* rescued from distress of other kinds.

"Won in a stake:" it is observed by authors, that *the verb* is used under the rule they quote, that verbs of this particular class are employed in the secondary passive. But in fact it is also used in the primary passive, under another rule: therefore, in a stake thus set, "if I be overcome, I give thee that slave belonging to me," the winner becomes the owner of the slave.

A slave, who offered himself in this form, "I am thine," is of two sorts; with, or without, a stipulated time. Thus; "so long as I serve thee as a slave, so much money shall be paid monthly;" or, "I will serve thee as a slave one year:" in these forms are two sorts of slave, offering himself in these words, "I am thine;" *one* for a stipulated period, and *the other* for an indefinite time. But the slave for a fixed term, as subsequently described, uses a similar form of speech.

This may be understood of the slave made* by the party himself, like a son made, *or adopted*, as described by MENU (Book V, v. CCLXXXV). A son made, *but whose adoption is* not *completed* according to *legal* form, is included under slaves made: how this interpretation can have been omitted by authors, may be questioned.

An apostate mendicant is a slave to the king.

* *Crita*, or made, has been explained 'for a stipulated time;' taken literally, it admits of the interpretation here proposed by the compiler.

XXX.

Cátyáyana:—Where men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the military or commercial tribe.

Misra and Chandéswara explain *the term used in the text*, the *Cshatra* and *Vis or* Cshatriya *and* Vaisya, collectively. Thus a man of the sacerdotal class is slave to none: but the *Cshatriya* and *Vaisya* become slaves to the king.

XXXI.

Dacsha:—If a man, after assuming religious mendicity, abide not by his duty, let the king cause him to be lacerated by the feet of dogs, and immediately banish him.

Deviation from his duty occurs when he takes a wife, like a householder; and in similar instances. That should be discussed under the title of Banishment.

"A slave for the sake of his bride" (XXIX 3); a man who acquiesces in slavery for the sake of love, as mentioned by Vríhaspati (IV 1).

XXXII.

Vríhaspati defines that *slave*:—But the man who cohabits with the female slave of another, should be considered as a slave for *the sake of* his bride; he must perform work for her master, like other slaves, or like servants for pay.

As a servant for pay, (that is, a hireling,) or as a slave performs work for his own master, so must he serve his wife's master.

XXXIII.

Menu:—There are slaves of seven sorts; one made captive under a standard, *or in battle*, one maintained in consideration of service, one born *of a female slave* in the house, one sold, or given, or inherited from ancestors, and one enslaved by way of punishment.

"Made captive under a standard;" conquered in battle. As in the chapter concerning *Virát'*, (*in the* Mahábhárata,) Bhímaséna thus bespoke a king called Susebma, vanquished during the war which arose from the seizure of a cow on the south of *Virát'*:

Fool! if thou desirest life, hear from me the conditions: thou must declare before a select assembly, and before the multitude, "I am a slave:"

2. On these terms will I grant thee life. This is a settled rule for him who is conquered in battle.

Consequently, since Bhíma requires his declared acquiescence, one who agrees to it becomes a slave; not every person conquered in battle, *whether he take quarter or not:* and this, *in the text of* Menu, comprehends persons won in a stake.

"Maintained in consideration of service;" who has agreed to slavery in consideration of maintenance, whether in a season of scarcity or abundance. "Born in the house;" born of a female slave in the house. "Sold", by his father and mother, or by either of them; or "sold" by himself. "Given" by his father and mother, or by either of them; or self-given: and he who agrees to slavery in consideration of relief from distress, is self-given; for he gives himself on account of the favour conferred in delivering him from distress. "Inherited from ancestors," (literally paternal); descended in succession from the father or other predecessor. "Enslaved by way of punishment;" who has agreed to become a slave to acquit a fine, under the text of MENU.

XXXIV.

MENU:—A man of the military, commercial, or servile class, who cannot pay a fine, shall discharge the debt by his labour: a priest shall discharge it by little and little.

But an apostate from religious mendicity is also enslaved, by way of punishment; for CÁTYÁYANA directs, that a *Cshatriya* and *Vaisya* shall become slaves of the king, to atone for the offence of apostacy from religious mendicity (XXX).

It must here be considered, that it does not appear, from that part of CÁTYÁYANA's text (let the king reduce to slavery a man of the military or commercial class), that the king shall make him his own slave: he may cause him to become the slave of another; for this would be no infraction of the rule. But, on the question, whose slave does the apostate from religious mendicity become? slavery to the king is supposed by CHANDÉSWARA to be denoted by the terms of CÁTYÁYANA's text: the meaning there is, let the king enslave him. On the question, to whom shall he be a slave? since this must be comprehended *in the text,* and since one other person is mentioned, he takes him as his own slave.

Is there not an inconsistency with the text of NÁREDA; for he further mentions the slave for the sake of his bride, and a slave pledged by his master (XXIX)? Some reply, the texts are intended to propound their servitude, not to enumerate the slaves; for they are so explained by VIJNYÁNÉSWARA. The servitude of seven persons is shown in the text of MENU (XXXIII), *it is* not *implied* that others besides those seven are not slaves. His text precludes a less number: not a greater number; for an explanatory enumeration permits a greater number.

Others hold, that a servant, for the sake of his bride, acquiescing in servitude through love, and giving himself into slavery for the gratification of his lust, is included under "one given" (XXXIII): and in him who is pledged by his master the property of the creditor is not acknowledged, but usufruct with the assent of the debtor. After the stipulated period, if the debtor do not redeem a pledge *given* for a fixed time, it becomes the creditor's property: how *then* are the slaves described by NÁREDA comprehended in the text of MENU? but VIJNYÁNÉSWARA admits the creditor's property in a pledge, even within the period of the mortgage; surely on his opinion, *they are* not *all* comprehended in MENU's text. *To this objection the answer is,* there is no proof of the creditor's property in a pledge within the period for which it is pledged; but, after that period, his property is acknowledged, and it ultimately becomes a secondary or inferior sale. Thus, if the agree-

ment be in this form, "should I not redeem the slave at the expiration of the fifth year, this slave, and this property, belonging to me, shall be thine;" the principal sum being considered as the price, there is in fact the complete act of relinquishment at a subsequent time, after a prior receipt of the price. It must be admitted by VIJNYÁNÉSWARA and the rest, *that it means pledged* for the payment of a debt due to the man himself; for redemption from a debt to another is implied by "one relieved from great debt" (XXIX).

Thus the texts of MENU and NÁREDA correspond: but NÁREDA has mentioned fifteen sorts as an enlarged explanation, and to form the *necessary* distinctions in regard to the enfranchisement of slaves.

SECT. II.—*On Emancipation from Slavery.*

ART. I.—*On Enfranchisement of Slaves.*

XXXV.

NÁREDA:—Of those *slaves* the first four *(one born in the house, one bought, one received, and one inherited)* are not *of right* released from slavery: unless they be *emancipated* by the indulgence of their masters, their servitude is hereditary.

2. That low man, who, being independent, sells himself, is the vilest of slaves; he also cannot be released from slavery.

Literally "there;" that is, among those slaves: the first quadruple set *is not emancipated;* collectively, one born of a female slave in the house, one bought, one received in donation or the like, and one inherited from ancestors: these cannot be released, unless they be emancipated by a master, whose life has been endangered, *but has been saved by the slave;* for the enfranchisement of slaves of all sorts, in that case, will be mentioned.

"Indulgence" *is explained*, in the *Retnácara*, affection. Consequently the slave born in the house, and the rest, may be liberated if the master be satisfied; but not otherwise. Since one maintained in a famine and the rest are not comprehended, in the text of NÁREDA, under slaves received in donation and the like, they may be liberated. But it should also be inferred, that a boy received for adoption as a son given, and ultimately becoming a slave through a failure in *the* forms *of adoption*, is not liberated without favour; since he also is one received *in donation*.

"Independent" (XXXV 2); *explained*, in the *Retnácara*, his own master. Consequently there is no fault on the part of a dependent person, subject to his father and mother.

"He also cannot be released from slavery" (XXXV 2); that is, one who sold himself cannot be released from slavery. Hence emancipation is denied to five *slaves*. The separate mention of one bought, and one self-sold, is intended to denote a greater offence in the person who sells himself; but there is no offence on his part, if he sell himself for a religious purpose.

Márcandéya-purána:—If I enter the flames unknown to the *Chánḍála*, I shall again become his slave in *another* birth.

This is a reflection of the universal monarch HERISCHANDRE, who had become the slave of a *Chánḍála* to pay the sacrificial fee, after giving his

whole property to the holy Sage VIŚWÁMITRA, and who wished to commit himself alive to the flames, with his wife, through affliction at the accidental death of his infant son RÓHITÁŚWA.. "Unknown to the *Cháńdála*, &c:" that is, since a slave is dependent in *all* acts generally, he is not liberated even by voluntary death.

On this MISRA remarks, that "the speech of HERIŚCHANDRE regards the misconduct of a slave; else he could never be released from slavery *under any circumstances.*" It should be considered, that a slave is liberated by death; *but*, since it is shown by implication, in the *Márcandéya-purána*, that a slave is dependent even in regard to *life and* death, his suicide, though allowed by the law, would produce immoral consequences; hence, as a man is debtor to his creditor even in another birth, so he would become the slave of his former master. Yet, if his death happen by the act of GOD, he would be liberated from slavery; for there is no proof of the state of slavery continuing in another birth, and the connexion of servitude is *in general* limited to the period of life. As for the observation, that else he could not be released from slavery, it should be considered, that, by the favour of deities, he may be released from slavery, if he adhere to his duty. All this regards another world; there is not much use in further discussing the question.

XXXVI.

MENU:—A *Súdra*, though emancipated by his master, is not released from a state of servitude; for, of a state which is natural to him, by whom can he be divested?

The meaning is, even by the owner's favour, a *Súdra*, born of a female slave in the house, or otherwise included in the quadruple set, or *become* a servant of the lowest rank, cannot be released.

And a slave is not released from servitude without favour. There is no inconsistency if this be applied to others besides a *Súdra*, but born of a female slave in the house, or the like. The *Retnácara.*

Emancipated by him to whom he had become a slave by capture in war or the like, a *Súdra* is not released from a state of servitude to *Bráhmanas.* Since servitude is natural to him, who can devest him of a state of slavery proper to the servile class? Hence, it is necessary that obedience be paid by a *Súdra* to a *Bráhmana*, or twice-born man. This is intended; else the subsequent enumeration of slaves would be nugatory. CULLÚCABHATTA.

When some *Bráhmana*, becoming very poor, emancipates a slave, is he not liberated? As a son, so a slave, should not be forsaken. When in very great distress a man releases a slave, still, although the slave any how provide his own subsistence by other work, he must return when his master recalls him, and perform the duties of servitude: the text is intended for this purpose. It is implied in CULLÚCABHATTA's exposition, that if the *Súdra* say, "because I have been abandoned by thee, therefore I will not do thee service," then the king shall compel him to *discharge the duties of* servitude; else the subsequent enumeration of slaves would be nugatory. Such is the meaning. If the sense of the ordinance be, "since he belongs to the servile class, he is the slave of twice-born men; therefore the king shall cause him to be employed in service, however reluctant:" then the particular allusion of this text to one made captive under a standard, and to one maintained in consideration of service, would be unmeaning; for the servitude of others

besides those made captives under a standard and the like, results even from their servile class. It must however be considered, that the text *which enumerate slaves* (XXXIII) can also be applied to others besides *Súdras*.

XXXVII.

MENU :—Both him of the military and him of the commercial class, if distressed for a livelihood, let some wealthy *Bráhmana* support, obliging them, without harshness, to discharge their several duties.

2. A *Bráhmana*, who, by his power, and through avarice, shall cause twice-born men, girt with the sacrificial thread, to perform servile acts without their consent, shall be fined by the king six hundred *panas*.

It should not be objected, that, the servile employment of others than *Súdras* being forbidden by these texts of MENU, slavery is limited to this class; and the slavery of one made captive under a standard, should be established for *Súdras* only: and the sense of these texts is, that a *Bráhmana* should with tenderness support a *Cshatriya* or *Vaisya* distressed for a livelihood, but employ them in their own several duties ; that is, employing a *Cshatriya* in military service or the like, and employing a *Vaisya* in commerce and so forth, he should maintain them. Consequently, this sense of the text being also inferred as a matter of course, the text is delivered as a rigid precept. It appears, therefore, that a wealthy *Bráhmana*, having occasion for the service of a soldier or the like, should he, from anger or any other motive, omit to support those persons, shall be amerced. He must oblige the *Cshatriya* and *Vaisya* to discharge their several duties, not to perform servile acts. This also is a rigid precept, which the legislator delivers in the second verse. If he cause twice-born men, girt with the sacrificial thread, to perform servile acts without their consent, he shall be fined six hundred *panas*: and this, *in the objector's opinion,* agrees with CULLÚCA-BHATTA's exposition.

It is answered, the expression "without their consent," admits servitude with their consent: and servile acts may be performed for a *Bráhmana*, by a man of the military or commercial class, from religious motives ; as it is related in the *Mahábhárata* and other works, that CRÍSHNA, an incarnation of the divinity, who took upon himself the human body, and accepted the customs of the world, did present water to wash the feet of *Bráhmanas*. The author of the *Retnácara* also observes on the words "cannot be released from slavery" (XXXV), that they regard others besides *Súdras, but* born of a female slave in the house and the like.

If an independent *Bráhmana* employ a *Vaisya* and a *Súdra*,* hired as servants for military duties, or for commerce or the like, in washing his feet, against their will, he shall be amerced. Such is the sense, as appears from the use of the term "by his power" (XXXVII 2).

Then, if a *Súdra* at any time do not perform servile acts for a *Bráhmana*, ought he to be forcibly employed in his service? It appears from the expression "cannot be released from a state of servitude," that the state of servitude which has already occurred cannot be annulled. But, in this case, the man has not become a slave; what then shall be annulled? This should be considered.

* So the MS It should be *Cshatriya* or *Vaisya*.

It should not be objected, that the state of servitude was born with him ; because that is intimated, by the words, a state which is natural to him (XXXVI) ; and accordingly the servitude, even of one unbought, is admitted by the following text:—

XXXVIII.

Menu :—But a man of the servile class, whether bought or unbought, he may compel to perform servile duty ; because such a man was created by the self-existent for the purpose of serving *Bráhmanas*.

The expression, "a state which is natural to him," has no such meaning *as supposed in the objection*. What does it mean ? When a *Súdra* is born, is servitude to all *men* born with him ? Or servitude to no one in particular, but general, and *by which* he afterwards becomes the slave of him who takes him ? Not the first ; were it so, that *Súdra* might be taken as a slave by all twice-born men ; and if any *Súdra*, not serving any person, were accidentally starved or the like, it would be a sin on the part of all twice-born men ; a person cannot compel any *Súdra, whom he meets* on the road, to perform servile duty. Nor *is* the second *supposition right ;* for, servitude requiring a permanent connection, there cannot be a state of servitude without a master *to be served ;* consequently it is proved, that the son of a female slave forsaken by her master is not, at the moment of his birth, slave to any man. Even though a state of servitude were admitted to belong to that *Súdra*, there would be no use in *thus supposing* a perfect, but unconnected, servitude ; for, even though he were a slave generally, yet, unless he be received *in donation or otherwise* by any one man, he cannot be forcibly seized by him.

On this point the *best* opinion is this : as property in gold, silver, and other effects received, may be devested by gift, sale, or other alienation ; but not the dominion over a wife, though received like gold or the like ;) for a husband and wife are not divorced by desertion or neglect :) so a slave also is not emancipated. But that is technical, not actual : for, during the period of desertion, there is no sin on the part of his master in not supporting him ; and his master has no power over wealth *then* acquired by him. "A state natural to him" (XXXVI) is mentioned as a cause : and "natural" signifies produced at the creation, when the servile class was produced ; *namely*, his *natural* subsistence by servile attendance.

If any slave, emancipated by his master, has undertaken servile attendance on some other person, and afterwards the former master claims him ; what is the rule in that case ? He belongs to the second master ; because, in fact, he accepted *his service* at the very moment when his *former* servitude was ceasing. What is said of a *Bráhmana* compelling a man of the servile class to perform menial offices (XXXVIII), is intended to authorize the servitude of a *Súdra*, after forbidding that of a *Cshatriya* and a *Vaisya*. By the expression "compel him to perform servile duty," is declared the property of employing a *Súdra* in menial offices, whether bought or unbought : the word "bought" implies slave in general ; "unbought" denotes hired servant and the like ; consequently there is no offence in employing him on slavish work, though he be a servant *only*. This is expressly declared.

Until a *Súdra*, emancipated by his master, be taken by another, as thus explained, he may be remanded ; and a *Cshatriya* and *Vaisya* may be em-

ployed in servile duties with their consent: they may be released from servitude by the favour of their master, and cannot be again seized without their own consent. A master employing a *Súdra*, whether he be a hired or a commissioned servant, in menial offices, shall not be amerced; but if he employ a *Cshatriya* or *Vaisya* in servile duties, against their will, he shall be amerced. Such is the concise statement *of the law*.

That one born of a female slave in the house, one bought, one received in donation, and one inherited from ancestors, cannot be released from slavery, has been declared: NÁREDA next declares, that one who gave himself in this form, "I am thine," cannot be released from slavery.

XXXIX.

NÁREDA:—Over the slave, who, having given himself in this form, "I am thine," goes *to another, the second master* does not acquire *absolute dominion:* at pleasure the former owner may reclaim him.

This must be understood of a slave who goes of his own accord, without *emancipation by* the favour of his master.

"Slave;" *literally*, one not his own master. "If he go to another person;" if he go to become a slave: in that case the former master may claim that slave; and the other master, though he have received him, does not obtain him *as a slave:* but, emancipated by the favour of his master, he may be released from slavery. This should be affirmed; else it would be unequal that one born in the house and the like may be released from slavery, and that one who offered himself in this form, "I am thine," should be incapable of freedom.

It may be *admitted*, that, by their master's consent, a *Cshatriya* and a *Vaisya*, who have voluntarily undertaken servitude, may be released from slavery, and be received by another: but a *Súdra* may not be taken by another master; for it is declared by MENU, that a *Súdra*, though emancipated by his master, is not released from a state of servitude. This inference is denied. Since there is no proof of the former master's property after emancipation, an unowned slave may be received; and, a second property arising, both have not a distinct ownership. The title of both is absolutely similar; but the right of the second master subsists, because the slave has not been emancipated by him; therefore, without his consent, the former owner is prevented by this text (XXXIX) from seizing the slave.

It should not be objected, that the text of MENU (XXXVI) shows the former owner's property in a slave, though forsaken by him: hence, a second master acquires no property in a slave still appertaining to a former owner; for one peculiar right precludes another of the same nature. Property in an enfranchised slave, causing dependence and the like, is not literally admitted. That *another* may take him again into service, though enfranchised, is implied in the text of MENU (XXXVI); else, an enfranchised slave not being forsaken by his former master, the *Súdra* would be deprived of a livelihood, since he could not be received by another: or the householder would be guilty of sin in not supporting the slave, though voluntarily dismissed; since there could be no relinquishment annulling his property.

If *it be* admitted that a right, called ownership, over the liberated slave, *subsists* to authorize the master to remand his slave, wherever he reside, *even* after he has found a livelihood by alms and the like, still there is nothing

inconsistent with the right of the second master; for his property is of a different nature. But, in fact, no different title is admitted: for it may be explained by *supposing the* property annulled; and *another interpretation* would be inconsistent with *the notion of* a second master. The text of MENU (XXXVI) intimates the taking *of him* again *into service*, after emancipation from his last master, as well as from his first; for no distinction is expressed. Thus, according to authors, any slave emancipated by his master, received by another, and emancipated by him also, may be taken by his former master.

On the opinion, in which the slave for a stipulated time is opposed to him who gives himself in this form, "I am thine," this text (XXXIX) regards a slave for an indefinite term, as well as a slave for a definite time whilst the period *stipulated* is unexpired. A slave for a definite term is liberated after the period expires. But, according to authors, the slave for a stipulated term, as distinct from him who offered himself in this form, "I am thine," is not intended by this text (XXXIX). This should be admitted.

XL.

NÁREDA:—They who are stolen and sold by thieves, and they who are enslaved by force, should be liberated by the king; their slavery is not admitted.

Stolen by a robber in their infancy, or by a thief, and sold by him, but remaining silent at the time of the sale through apprehension of ill treatment from the robber, and afterwards telling the circumstanees to obtain their freedom, *these* slaves should be released; and if the master refuse their discharge, they shall be liberated by the king: and they who are enslaved by force, (*Súdras;* and *Cshatriyas*, or *Vaisyas*, employed in servile work without their consent;) shall also be released by the king.

If a potent robber, seizing any person, sell him; and the person sold remain silent; in that case, he ought not to be liberated by the king, because the purchase was *made* through the fault of the person sold. This is denied; for, whether he have consented or not, the validity of his act under the impulse of fear is not admitted by YÁJNYAWALCYA (Book II, Chap. IV, v. 58).

XLI.

YÁJNYAWALCYA:—One enslaved by force, and also one sold by robbers, is released from slavery.

This text of YÁJNYAWALCYA (XLI) is cited by VIJNYÁNÉSWÁRA in this manner; "the legislator declares the law applicable to the slave and apprentice." Consequently his meaning is, that one forcibly taken as a pupil is also released. But an apprentice is not suggested by the literal sense of the text; for he is not a slave, nor is he bought. However, a pupil is comprehended in the rule by parity of reasoning; and the obvious argument, noticed by this author, is also observed by us: moreover, should any person forcibly taking one fit to receive instruction in arts, compel him to reside in his house, and employ him in work; or if any person, not having authority over the boy, to please a teacher of arts, deliver to him another's child (without the knowledge of the father and mother) to receive instructions in an art; in those cases also, his apprenticeship is null. This is implied. VIJNYÁNÉSWARA's meaning is this: it appears from the legislator's propound-

ing the duty of an apprentice, after this text (XLI), by the verse cited in the preceding section (XXI), that an apprentice is also implied in this text.

But others say, that VIJNYÁNÉSWARA, author of a commentary on the collected texts of YÁJNYAWALCYA, having premised the five descriptions of persons bound to obedience as delivered by NÁREDA, and not finding any mention of pupil, and of hired and commissioned servants, in this chapter *of* YÁJNYAWALCYA, says, "he declares the particular law respecting slaves and apprentices:" therefore one verse (XLI) relates to slaves; the other verse (XXI) relates to apprentices.

This might be suitable, if it were not repeated, when citing the other verse (XXI), "he declares the duties of an apprentice." In fact, from his use of the term "applicable," ("he declares the particular law applicable to the slave and apprentice:") the commentator hints another opinion: it may or it may not be so; *still* compulsive apprenticeship and the like must be null under the general text (Book II, Chap. II, v. 10). This we deem *a* proper *exposition.*

"And also one sold by robbers" (XLI): it is the opinion of VIJNYÁNÉSWARA, that under the word "also," one pledged and one given are likewise released: and it should be understood, that a person won in a stake from a robber should also be discharged.

NÁREDA declares the mode of emancipation for all slaves:

XLII.

NÁREDA:—Among those, whoever rescues his master from imminent danger of his life, shall be released from slavery, and shall receive the share of a son.

Among those slaves of fifteen sorts, whoever delivers his master from danger of life, is released from slavery, whether he be a slave inherited from ancestors, or be of another description. This is the general cause of enfranchisement of all slaves; as mentioned in the *Mitácshará,* on explaining the text of YÁJNYAWALCYA (XLIV), "he who saves the life of his master, attacked by robbers, by a tiger, or the like, should be emancipated." Therefore the construction is, among these slaves above described, (one born of a female slave in the house, one bought, one received in donation, one inherited, and one who offered himself in this form, "I am thine;") whoever rescues his master, &c. This consequently obviates the bad interpretation, that one maintained in a famine, or the like, is not released from slavery on rescuing his master from danger of life; for, in comparison with one maintained in a famine, the servitude of one inherited or bought is more rigidly permanent: and the emancipation of one who saves his master's life, is mentioned generally by YÁJNYAWALCYA.

Without *the* consent *of his master* to his emancipation, he is not released from servitude on saving his master's life; this consent alone effects his release from slavery: such is the inference of common sense; for preservation of life, and every other service, is incumbent on a slave bought. If this be affirmed, the answer is, no such rule can be established without *authority from* the text of a Sage, or of an *esteemed* Author.

A master and servant, skilled in swimming, are crossing a river to go to another village. The master's apparel accidentally becoming loose, his power *of swimming* is lost while he is busied in making fast his apparel; and he is unable to pass the remaining part of the river, measured by five

or ten cubits *from the shore;* he is, however, landed by the servant, who had crossed before him, with the help of a boat or the like found on the shore. In this case, is he released from servitude, or not? It should not be affirmed, that he is released from servitude, in this case, under the authority of the ordinance: for it would be inconsistent with approved usage.

On this point, some observe, that where a slave, neglecting his own safety, and highly valuing his master's life, rescues him from the encounter of a tiger or the like, and is himself preserved by the act of GOD; in that case he is released from slavery. But if some person attempt to destroy a man by poison, and the slave of that man, discovering it, prevent him from eating the poisoned food; or if the master intended to go out of his house, not aware of a tiger standing at the door, but his slave, seeing the tiger, prevent him; in these, and similar cases, it may be admitted that he is not released from servitude. This should be examined.

"And shall receive the share of a son" (XLII); like a son, he shall receive a share of that man's wealth. That the slave should, like a son, take the heritage of a *Bráhmana,* seems contrary to reason; but should be allowed, because it is admitted by VIJNYÁNÉSWARA. Thus, in the chapter on the Administration of justice, or Forms of judicial procedure, after premising slaves from the womb, and the rest, he says, "since it is declared by NÁREDA, that whoever rescues his master from imminent danger shall be released (XLII), what should bar his suit against his master, if he be not released, or if the share of a son be not given?" Therefore no doubt should be entertained on what is expressed by the text, in the sense *thus* investigated by authors. However, in some places no such usage subsists on *the occasion of* benefits received from slaves: and therefore, in whatever country it is not customary to give a son's share *to a slave,* in that country if a benefit be received from any slave, the share of a son should not be given to him (Book I, v. XCVIII).

In the *Retnácara* and other works this text (XLII) is cited; but nothing particular is said respecting it.

XLIII.

NÁREDA:—One maintained in a famine is released from servitude, on giving a pair of oxen; for, what was consumed in a famine, is not discharged by labour *alone.*

"One maintained in a famine," or saved from death by food supplied during a scarcity of provisions, is liberated by the gift of a pair of oxen. The reason is assigned: what was consumed during the famine, is not discharged by his labour *alone,* but requires some other payment; and that, under the authority of the text, is the gift of a pair of oxen. Such is the construction according to CHANDÉSWARA. Consequently one maintained in a famine, desiring emancipation from servitude, must give a pair of oxen; so much is the consideration of his enfranchisement under the authority of the text: and what was consumed during the famine, is absolutely discharged by the work already performed by him; but, on account of the difficulties of that season, and the great value of things *then* consumed, a pair of oxen must also be given. Such is CHANDÉSWARA's meaning.

But MISRA holds that the sense is this; he is released on giving what he consumed during the famine, together with a pair of oxen. Consequently, he must repay what he used during the dearth. By directing payment of

what he consumed, it is not meant that the value it then bore should be made good; but, if it cannot be repaid in kind, it should be paid by an equivalent for the price borne at the time of emancipation.

Is not what he then consumed repaid by his labour? The Sage replies; it is not discharged by his labour" (XLIII). It is also said in the *Mitácshára*, in a gloss on the text of YÁJNYAWALCYA (XLIV), 'one maintained in a famine, and one maintained in consideration of service, are 'mancipated on relinquishing their maintenance, repaying so much as has 'been consumed out of the master's property from the commencement of '*their* servitude.' The meaning is this: it is intimated by the text, that property ceases on relinquishing maintenance, *that is*, food or eatables: but if one maintained in consideration of service, do not eat his master's food for the space of seven or ten days in the month of *Aswini* (*a season of religious abstinence*), that is no relinquishment of maintenance. Since he has no property in food which ought not to be eaten, that can be no loss of maintenance. It therefore appears, that relinquishment of maintenance consists in relinquishing food to which he has a right.

Since a slave has no wealth exclusively his own (LI and LII), is it not impossible for him to repay what he has consumed? Although this objection may be made under the opinion in which it is contended that slaves are incapable of property, yet the slave's ownership of wealth given through affection, like that of women over female property, must be universally acknowledged.

Others hold, that the text of YÁJNYAWALCYA (XLIV) does not relate to one maintained in a famine, because the gift of a pair of oxen is not mentioned; but relates to one maintained in consideration of service, for it accords with a text of NÁREDA (XLVIII); and in that text the word "immediately" shows his emancipation on the very day when he desires his release from servitude. (It should not be objected, that the word "immediately," signifying that day, denotes his enfranchisement on the very day when he relinquishes maintenance, *with, or without, demanding his discharge*). That word would be superfluous, since the same sense might be obtained without it: *and it must therefore signify the day when he claims his release.* In the present instance, some consideration, such as the gift of a pair of oxen, is required for emancipation from servitude. Even though one maintained in a famine were not distinguished from one maintained in consideration of service, still, being distinguished from a servant for a period depending on agreement, he must give a pair of oxen besides relinquishing his maintenance. By the word "relinquishing" (XLIV) is here meant not accepting it.

Since one maintained in a famine is similar to this servant, the exposition delivered by CHANDÉSWARA on the words "for what was consumed, &c." (XLIII) should be admitted in this case. Nor should it be objected, that it appears, from the word liquidate in the following text, that both must repay what they have consumed.

XLIV.

Yógi-YÁJNYAWALCYA:—He who saves his master's life, *is released from servitude; and so are some slaves* on relinquishing subsistence, and *others* on liquidating that *debt for which they became slaves.*

Saving his master's life, and payment of debt, are distinct from the direction for a pair of oxen to be given by one maintained in a famine.

However, there is no difficulty, *say these lawyers*, in explaining "liquidate" as signifying that he is emancipated by the gift of a pair of oxen, and by liquidating what he consumed during the season of scarcity.

XLV.

NÁREDA :—One pledged *is* also *released*, when his master redeems him by discharging the debt; but, if *the creditor* take him in payment *of his demand*, he becomes a purchased slave.

When the master whose slave he is, or his *own* father, redeems him, or when he redeems himself, then a slave pledged is also released: but if he to whom the slave is pledged take him, he is afterwards a purchased slave; this is, he remains as one bought. So the *Retnácara*. He becomes a purchased slave, because he is sold by his master for a price *paid* in *the remission of* the debt: and he who sells himself, is an effect bought. Hence these two cannot be released from slavery, unless by the favour of the master, or by saving his life.

XLVI.

NÁREDA :—Paying the debt with interest, a debtor is released from servitude; and a slave for a fixed period is also emancipated by fulfilling the stipulated term.

Repaying, with interest, so much as had been paid, through his master, to a creditor, and for which he consented to become a slave. Hence it appears, according to some lawyers, that interest must be again paid; else, "with interest" would be unmeaning. But that is wrong; for, were it so, a man who has undertaken servitude to discharge his own debt with interest, must again pay interest to his master. Therefore, he who has undertaken servitude to discharge a debt, must pay the principal and interest, if interest have not been *already* received: but in the case of one redeemed from a debt due to another, the man is absolutely a purchased slave; or he may be released from servitude, on payment of the same principal and interest which had been paid *to the creditor*.

"On liquidating that *debt*" (XLIV) is thus explained in the *Mitácshará*; the *slave* is released on liquidating, that is, on repaying with interest, the amount received by his master who pledged him, or the amount paid by the *present* creditor to redeem him from a *former* creditor. Another interpretation has been already mentioned: but this exposition agrees with the *Mitácshará*.

"By fulfilling the stipulated term" (XLVI): this is the mode of emancipation for him who is called a slave for a stipulated time. This interpretation is given by authors. This slave for a stipulated time is a distinct sort of slave offering himself in this form, "I am thine:" the emancipation of one who so gave himself having been completely declared, the emancipation of, a slave for a stipulated time has been already delivered. Thus other lawyers expound the text. But others again hold, that the emancipation of him who is called a slave for a stipulated time, is comprehended under the following text (XLVII). "Stipulated;" a stipulated term, or a definite period: this interpretation, already noticed, should be remembered.

XLVII.

NÁREDA :—One who offered himself in this form, "I am thine," one made captive in war, and a slave won in a stake, are emancipated on giving a substitute equally capable of labour.

It is the opinion of other lawyers, that one who offered himself in that form is distinct from the slave for a definite period.

"On giving a substitute;" on giving a slave equal to himself. The *Retnácara*.

Another slave equally capable of labour. MISRA.

XLVIII.

NÁREDA :—One maintained in consideration of service is immediately released on relinquishing his subsistence, and a slave for the sake of his bride is emancipated by divorcing his wife.

He who is servant for the sake of subsistence is emancipated by relinquishing it. So MISRA. But we cannot ascertain why servant is mentioned under the title of Emancipation from slavery, for it would be proper to say, he who is a slave for the sake of subsistence, &c.

"By divorcing his wife; by separating *himself* from her. "His wife;" the female slave. The *Retnácara*.

According to the *Mitácshará*, the sense is, 'because it is forbidden to cohabit with a slave.'

"His wife;" the female slave. After divorcing or forsaking her, the obligation to serve her master ceases. The *Viváda Chintámeni*.

XLIX.

CÁTYÁYANA :—If a man approach his own female slave, and she bear him a son, she must, in consideration of her progeny, be enfranchised with her child.

"Her progeny;" the son born of her. On his account she must be enfranchised with her issue; that is, with her son: and this rule is applicable if her master have no legitimate or adopted son; for in that case she need not be enfranchised. This construction agrees with the *Pracáśa*, *Párijáta*, and *Retnácara;* and MISRA holds the same opinion.

NÁREDA declares the form of manumission.

L.

NÁREDA :—Let the benevolent man, who desires to emancipate his own slave, take a vessel of water from his shoulder, and instantly break it;

2. Sprinkling his head with water containing rice and flowers, and thrice calling him free, *let the master* dismiss him, with his face towards the east:

3. Thenceforward let him be called "one cherished by his master's favour:" his food may be eaten, and his favours accepted; and he is respected by worthy men.

"Benevolent;" affectionate, or satisfied. It comprehends a person emancipating the slave who has preserved his life, or the like; for no other form of manumission has been ordained. Or the manumission of a slave, who has preserved his master's life, should be performed by the master with affection and benevolence.

"Take a vessel of water from his shoulder, and instantly break it;" by this is figured the discontinuance of his office of carrying water. From the cessation of that duty, it appears, under the authority of the text, that all servile duties are discontinued. The sprinkling of water with flowers and rice is auspicious, and is ordained as a part of the ceremony of manumission. "Thrice declaring him free" is intended to confirm his emancipation. Dismission with his face towards the east is auspicious, and is ordained, *but* as an *unessential* part of the ceremony. Thenceforward he shall be called by the appellation of "*freed-man, or* one cherished by his master's favour." The *Retnácara.*

Others state this meaning: his appellation formerly was, "the slave of this man;" but now he should be called, "cherished by this man's favour."

"His food may be eaten:" it appears from the text, that, if a man of the commercial class happen to be the slave of a *Cshatriya*, his food should not be shared by other men of the commercial class; but, after manumission, it may be shared by them, and so in other cases. "And his favours accepted:" it appears that favours should not be conferred by such a *Vaisya* before manumission; but now, after manumission, they may be accepted. Some lawyers hold, that his favours could not be received, because he was incapable of property; but now, since he may possess property, being free, his favours may be accepted.

LI.

NÁREDA:—These three persons, a wife, a slave, and a son, have, *in general*, no wealth exclusively their own: the wealth, which they may gain, is *regularly* acquired for the man to whom they belong.

LII.

MENU:—Three persons, a wife, a son, and a slave, are declared by law to have, *in general*, no wealth exclusively their own: the wealth, which they may earn, is *regularly* acquired for the man to whom they belong.*

2. A *Bráhmana* may seize without hesitation, *if he be distressed for a subsistence*, the goods of his *Súdra* slave: for, as that slave can have no property, his master may take his goods.

"Earn;" acquire. The *Retnácara.*

The sense is, 'doing acts whence property may be obtained.' Such acts are the labours of husbandry and the like. But CULLÚCABHATTA says, this merely illustrates the dependence of a wife and the rest, in respect of property acquired by themselves; for it will be mentioned, that a wife has exclusive property of six kinds; and a wife being qualified for acts in which property must be used, a woman, with *the* assent of her husband, may even

* Already cited in Book II, Chap. IV, v. LVI.

use wealth common to them both. VIJNYÁNÉSWARA holds the same opinion; and so do JÍMUTÁVÁHANA and others. But it does not appear to be admitted by CHANDÉSWARA, VÁCHESPATI MISRA, and others; for they otherwise explain these, and the texts which will be cited. The mode of reconciling the difficulties suggested by CULLÚCABHATTA will be delivered in its place.

The sense of the second verse (LII 2), according to CULLÚCABHATTA, is, that a *Bráhmana* master, without hesitation, with confidence, without apprehension of punishment from the king, may take the goods of his slave if he be distressed: the Sage subjoins a *lax* complimentary phrase; whatever belongs to his slave, belongs to the master; the slave, though he be the owner of the goods, has not exclusive dominion over them. Therefore, under the authority of the text, the master, though he forcibly seize goods belonging to another, (*that is, belonging to his slave,*) shall not be amerced.

But, according to the opinion, in which it is maintained that a slave is absolutely incapable of property, "without hesitation" is explained 'with confidence:' in this case, any *Bráhmana* whosoever can only receive from a *Súdra* slave effects ascertained not to belong to his master; but *he must* not *accept* goods which are not *so* ascertained: the Sage declares it an offence to accept them without such an ascertainment, "he can have no property, &c:" thus, if he receive the goods of a stranger from *the hands of* a different person, the validity of the gift may be questioned.

LIII.

DÉVALA, *cited* in the *Retnácara* and *Chintámeni*:—After the death of the father, sons may divide his estate; but they have no ownership, *or full dominion*, while a faultless father lives.*

2. MENU has declared, that, like them, women have no dominion over any thing, while their husbands live; nor slaves, while their master survives.

It appears from the expression, "like them," that the want of dominion of a son whose father is living, over the paternal estate of a wife while her husband survives, and of a slave during the life of his master, are similar. What is this want of dominion? Since it is intimated by the two conditions, (while the husband lives, and while the master exists,) that both have *dominion or* ownership after *the* death *of the husband and master* even at that time dominion, or ownership, subsists, but is in fact a mere entity. In expounding the text of NÁREDA (Book II, Chapter IV, v. LIII 2), persons not their own masters are explained by authors, 'sons, slaves, and the like.' But want of dominion is an absolute want of independence. Accordingly that term is used instead of the word dependence: and slaves and the rest cannot, at that time, give away their own acquired property.

It should not be argued, that this text relates to wealth acquired by the master of the slave, or by the husband of the wife. The exception could not be pertinent, unless their dominion or ownership might have been supposed; for an exception implies a prior general rule. Since the independence of a son might be supposed, because he has ownership of his father's wealth (Book V, Chap. I, Sect. I, Art. I), the text is propounded for the purpose of denying that independence. Thus some expound the law.

* Cited again in Book V, v. 5.

"Over any thing;" since independence in regard to female property will be deduced from particular texts, and from the reason of the law, this dependence regards all things except that. The wife's and the slave's want of property abovementioned (LII) is a privation different from that of female property and the like; or it may be understood as dependence in regard to property different therefrom. Wives and the rest may accomplish rites for which money is required, by using female property and the like.

LIV.

CÁTYÁYANA :—Whatever goods belong to a slave, his master is declared by law to have dominion over them; but that master has no right to the goods which are acquired by public sale.

This reading (*pracáśa-vicreyát*, or public *sale*,) occurs in some places of the *Retnácara:* but in the *Chintámeni* the reading is, through favour or by sale (*prasádavicreyát*); and this may be well expounded. What is sold, through favour, by the master to the slave; or what is obtained by the slave from his master, by sale, (that is, by purchase,) or obtained by him from his master through favour, belongs to the slave, not to his owner. So the *Retnácara.* MISRA expounds it: what is obtained by the slave from his master's favour, or by sale from him, belongs to that slave; his master has no right to it. As women are independent in regard to female property, so are slaves also in regard to property acquired by favour. It appears from the literal sense of the text, that slaves are independent in regard to what has been given through favour by the master, or by another person. But MISRA and the rest say, by the master's favour.

The *Pracáśa* and *Párijáta* concur in reading *na swámí dhanam arhati*, the master has no right to the goods. LACSHMÍDHARA reads *tat swámí dhanam arhati*, their *master or* owner has a right to the goods. According to that reading, "their owner" is meant of the slave. So the *Retnácara.*

LV.

CÁTYÁYANA :—A free woman, or one who is not a slave *of the same master (for the word* adásí *may bear either sense)*,* becoming the bride of a slave, also becomes a slave *to her husband's owner;* for her husband is her lord, and that lord is subject to a master.

Literally, "not a female slave;" that is, not mancipated to the master of him whose bride she becomes: for this *interpretation* is necessary from the connection implied in the word slave; and, a master of the male slave being supposed, it is proper to interpret the text, not mancipated to him. The expression "she becomes a slave," also implies the same connection. In this exposition, the *Viváda Retnácara* and *Viváda Chintámeni* concur: and the female slave of another, or a free woman not the slave of any man, becoming the bride of a mancipated servant, is enslaved to his master. In that case the female slave of another becomes enslaved to the master of the male slave, with the assent of her former master.

"Not a female slave:" if the negation show one different from a

* *Adásí:*] the gloss hardly notices the more obvious interpretation of free woman: without a reference to the *Vivída Chandra*, I should not have discovered that both interpretations are intended by the commentators cited on this text.

female slave generally, (*that is, a free woman,*) and if it be said that she who is the slave of any other person is not different from a female slave generally, (*that is, she is not a free woman,*) still there may be a general difference from slavery, because she is released from servitude by *her master's* consent *to her marriage*. In effect there is no difference *between these expositions*. Such is the opinion intimated in the *Retnácara*.

But MISRA writes, that her marriage is in fact a cause of emancipation from servitude to her former master. Hence this text belongs to that title *(the title of Emancipation)*; and proves the *second* servitude to be formed with the consent of her master. In the case of her marriage without his consent, as in the marriage of a *chét'icá*, or female attendant, the former master's property is not lost.

ART. II. *On Persons liable to Slavery.*

LVI

NÁREDA:—In the inverse order of the classes, slavery is not legal, excepting *the case of* one who forsakes his duty: *in this respect*, the condition of a slave is held similar to *that of* a wife.

"In the inverse order:" thus a *Vaisya* cannot be the slave of a *Súdra*; nor a *Cshatriya*, of a *Vaisya*; and so forth. An illustration is given; "similar to *the condition of* a wife:" as a woman of the commercial class cannot be the wife of a *Súdra*, nor a woman of the military class be the wife of a *Vaisya*; so in this case also. "Excepting one who forsakes his duty:" by this it is expressed, that one who forsakes the duty of his own order, may become a slave even in the inverse gradation of classes. Such is the opinion of MISRA and CHANDÉSWARA. Consequently, an apostate *Vaisya* may voluntarily become the slave of a *Súdra*, and so forth; but if he do not agree to become the slave of any person in particular, the king shall make him his own slave, as already mentioned.

On this point an observation should be made: the servitude of him alone who forsakes the *professed* duty of his "order," is expressly allowed in the inverse gradation of classes; is the servitude even of others than a *Bráhmana*, who forsake the duty of their "class," illegal in the inverse gradation? for, how can the expression, "except one who forsakes his duty," bear both senses?

LVIII.

CÁTYÁYANA:—BHRIGU admits the servitude of one who, being his own master, gives himself, as *the marriage of* a wife *self-given is acknowledged:* slavery should be limited to three classes; never *can* a *Bráhmana become a slave.*

2. *The servitude* of men of the military, commercial and servile classes, who have forfeited their independence, may be in the direct, not in the inverse order of the classes.

3. But even a man of equal class must not reduce a *Bráhmana* to slavery; yet a mild and learned man may employ in labour one inferior to himself in those qualities.

4. Still let not the highest twice-born man perform impure work; for the glory of a king is obliterated by the slavery of a *Bráhmana.*

5. The law permits the servitude of men of the military, commercial, and servile classes, to one of an equal class, on some accounts; but on no account let a man compel a *Bráhmana* to perform servile acts.

"Never a *Bráhmana*" (LVII 1): the slavery of a *Bráhmana* is universally forbidden: "as *in the case* of a wife." He elucidates the precept: "in the direct order of the classes, &c." Men of the military and other tribes, accidentally forfeiting their freedom and independence, *may become slaves* in the direct order of the classes. This construction *is suggested* by preceding terms. Though the servitude of a *Bráhmana* be universally prohibited, he repeats the prohibition for the sake of particular explanation; "but even a man of equal class, &c." Or the servitude of other classes, in the direct order, is declared; as there is no class superior to a *Bráhmana*, his servitude to a man of an equal class might be supposed: the Sage obviates that doubt. "But even a man of equal class, &c." (LVII 3); by this it is implied, that the servitude of *Cshatriyas* and the rest, to men of equal class, is permitted. He subjoins a particular rule in respect of a *Bráhmana:* "a mild and learned man, &c.;" such a man, reducing to servitude a *Bráhmana* inferior in respect of virtue and learning, may not compel him to perform impure work, such as removing urine or ordure; but he may employ him in pure work, such as sweeping a temple or the like. But the king should never reduce a *Bráhmana* to slavery: the Sage therefore says, the king's glory would be obliterated. Or the expression is general; his glory would be lost, even if a *Bráhmana* be enslaved by others. This intimates disgrace. Hence the servitude even of a willing *Bráhmana* should not be permitted; for *the king* himself would suffer thereby.

By forbidding the servitude of a *Bráhmana*, no objection is implied to his serving as an agent in collecting the revenue of a village or the like. It should not be said, that even the office of an agent, being service, is forbidden, because MENU ordains, "never let him (*a* Bráhmana) subsist by *Swavritti;*"* and he himself explains it, "Service is named *Swavritti,* or *dogliving,* and of course he (*a* Bráhmana) must by all means avoid it;"† which is expounded by the learned, service or acts producing gratification only, *not religious merit.* From the declaration contained in the following text, that a *priest becoming the* king's servant is not a true *Bráhmana,* (or, which is the same thing, that the priest offends,) no fault on the part of his master is established.

SÁTÁTAPA:—Those untrue *Bráhmanas* are declared by holy Sages, acquainted with the principles of things, to be *of* six *sorts:* the first of them is a servant of the king; the second, a buyer and seller.

Some hold, that a *Bráhmana* may, with his own consent, be employed as a commissioned servant; but not without his consent, for the appropriate fine would be thereby incurred.

"The law permits, &c." (LV 5): equal class there comprehends equal qualities. Thus a *Cshatriya*, a *Vaisya*, and a *Súdra* may be employed as

* MENU, Chap. IV, v. 4. † Ibid. v. 6.

slaves by men of equal class, even though these be only equal in virtue: such is the law in respect of those classes. But a *Bráhmana* can never be the slave of one *merely* equal in virtue. The *Párijáta* and HELÁYUDHA.

A *Bráhmana*, who follows the duties of the military, commercial, or servile class, bearing arms, practising husbandry, commerce and the like, or performing service, can never employ a *Bráhmana* in a servile duty.

LACSHMÍDHERA.

But CHANDÉSWARA assents to both constructions.

"Their several duties" (XXXVII 1) are explained in the *Retnácara*, the duties ordained for the military and commercial classes. They are maintained in consideration of such work. But, if a *Bráhmana* cause them to perform servile acts, the same legislator declares *a penalty* (XXXVII 2). A *Bráhmana*, who, by his power, shall cause twice-born men, girt with the sacrificial thread, (or virtuous and learned,) to perform servile acts without their consent, shall be fined by the king six hundred *panas*. This is the sense according to the *Retnácara*. By "twice-born men" are meant the *Bráhmana*, *Cshatriya*, and *Vaisya*. But, with their consent, there is no objection to the performance of servile acts by men of the military and commercial classes.

But a man of the servile class, whether bought or unbought, he may compel to perform servile duty (XXXIII): whether bought or unbought, he may compel him to perform impure work. The *Retnácara*.

LVIII.

VISHNU:—He who employs a man of the most elevated class in servile duty, shall be fined in the highest amercement.

"A man of the most elevated class" is explained, in the *Chintámeni*, a man of the sacerdotal tribe. Others think there is no difficulty in assigning such a punishment to the man who employs, in servile duty, one of a higher class than his own.

In the case of one who is not his own master, dominion and servitude occur in the inverse order of the classes; *as* in the story of HERIŚCHANDRE, *recorded* in the *Márcandéya-purána*: accordingly the term "his own master" is used by CÁTYÁYANA and others, when prohibiting servitude in the inverse order of the classes. CHANDÉSWARA.

It should be considered, that the expression "his own master" is thus used in the text of CÁTYÁYANA (LVII); "one who, being his own master, gives himself." The servitude of one who is not his own master, in the inverse order of the classes, may be thus understood; when a *Cshatriya* delivers his own *Vaisya* slave to be the mancipated servant of a *Súdra*, then *one who is not his own master becomes a slave in the inverse order of the classes*.

LIX.

CÁTYÁYANA:—He who seizes a woman of the sacerdotal class, he who sells her, and he who enslaves a woman of family, impelled by lust.

2. Or causes her to be approached by another, shall be amerced and that *enslavement* is null.

There is a slight difference in the reading according to the *Retnácara* and *Chintámeni.** "Impelled by lust" is explained in the *Retnácara*, with her own consent, through desire. Both authors explain the text; "he who enslaves a woman of family voluntarily offering herself, or who delivers her to another, shall be fined." Authors have not exhibited the *other* interpretation; "he who enslaves a woman of family impelled by lust, (*that is*, unable to resist the impulse of desire, and *therefore* yielding her person,) shall be fined." Nor is it noticed, that this is inconsistent with AMERA's interpretation of a woman of family, 'a woman who preserves *the honour of* her family.

"And that is null" (LIX 2): that enslavement is null and void. Thus it is incidentally mentioned, that she is of course released from slavery.

LX.

CÁTYÁYANA:—The man who treats as a slave the nurse of an infant child, or a free woman, or the wife of his dependent, incurs the first amercement;

2. And he who attempts to sell an obedient female slave, though she resist the sale, and though he be not distressed, but able to subsist, shall pay a fine of two hundred *panas*.

"The nurse of an infant child," who nourishes that infant at her breast. "A free woman," intrusted to him, or who has become a servant for maintenance. "His dependent;" his servant. "Though she resist;" though she say, "I ought not to be sold." The *Retnácara*.

It appears that the nurse of an infant, though she be a slave, should not be so treated: for "free woman," *subsequently mentioned*, denotes an independent woman. VÁCHESPATI MISRA clearly explains it: "the nurse of an infant," though she be a slave; that is, one who gives her breast to an infant: "a free woman;" one who serves for subsistence and the like: if they do not consent to be sold, the *seller incurs* the first amercement, or a fine of two hundred and fifty *panas*.

"An obedient female slave" (LX 2); from this it appears that there is no objection to the sale of one whose conduct is vicious. It also appears, from the term "though he be not distressed," that there is no objection to the sale, if he be distressed for subsistence; and from the expression "able to subsist," that there is no objection to the sale, if he be unable to subsist otherwise, though the season be not calamitous.

SECT. III.—*On Wages and Hire.*

LXI.

NÁREDA:—The rule and the act of payment, and non-payment, of the wages or hire of servants, are *now* declared, called in law Non-payment of wages *or* hire.

The title of law, called Breach of promised obedience, has been already propounded; that which is called Non-payment of wages or hire, is now

* In the first, the text is read *Cámát tu sans'ritám;* in the other, *Cámát sansrĭjatím.* This variation does not affect the sense.

delivered. Considering breach of promised obedience as a branch of non-payment of wages, MENU has not separately propounded it; or breach of promised obedience falls under the miscellaneous or supplementary title.

The rule and act of payment and non-payment both *constitute the title of* Non-payment of wages or hire. The rule of payment, ("wages or hire should be paid;") and the act of payment: the rule of non-payment, ("wages or hire should not be paid;") and the act of withholding payment: *these* are *comprehended in* non-payment of wages or hire.

VIJNYÁNÉSWARA reads, "the consecutive rule of payment and non-payment of wages to servants is declared;" and he expounds it, the consecutive rule of payment, and consecutive rule of non-payment, will be delivered in the following verses, under *the title of* Non-payment of wages or hire.

LXII.

NÁREDA:—Let the master, for whom work is performed, pay wages to the servant, according to their agreement, at the beginning, the middle, or end of his labours, as may be settled between them:

2. Wages not being stipulated, let the factor, the herdsman, and the servant in husbandry, *respectively*, receive a tenth part of the profit on goods sold, of the milk, and of the grain.

"The master for whom work is performed;" *literally*, the master of the work. According to their agreement; as was stipulated. At the beginning, the middle, or end of the labour. The *Retnácara.*

Consequently the meaning is, at the beginning, the middle, or end of the labour, as was settled between them; the wages shall be paid at the period agreed on. But if none were settled, any one of those periods may be the term of payment: and if the wages be not paid even at the third period, application should be made to the king.

Others hold, that payment should be made by him who shares *the produce of labour*, at the beginning, the middle, or the end of it. According to their opinion it is intimated, that, if payment be not made at those periods respectively, by them who share the produce of labour, recourse to the king is allowed, and so forth.

Successively, five parts at the commencement, seven at the middle, and twenty-eight at the end of the labour. The *Párijáta.*

According to this opinion, dividing the whole of the wages agreed for, into forty parts, he should pay five at the commencement of the labour, and so forth. Whence the author has deduced a division into forty parts, and the successive payment of five parts, &c. should be inquired. At present, an agreement for paying wages at the end of the month is very customary.

"Milk;" *literally*, the seed of cows (LXII 2): *meaning* the best produce of kine, *which is* milk. The *Retnácara.*

LXIII.

YÁJNYAWALCYA:—He who causes work to be performed without fixing the wages, shall be compelled by the king to give a tenth part of the *profit arising from* commerce, cattle, or grain.

The master who causes work to be performed in commerce, attendance on cattle, or agriculture, without fixing the wages of his servant, shall be compelled by the king to pay him a tenth part of the profit *arising* therefrom. The *Retnácara.*

VIJNYÁNÉŚWARA *gives* the same *exposition.*

LXIV.

YÁJNYAWALCYA :—The will of the master *determines the wages* of him who transgresses time and place, and of him who does the work otherwise *than was stipulated :* but more shall be paid if more be done.

A servant who works at a different time and place from that which is proper, or otherwise than was agreed, by doing less or the like, receives wages at the will and pleasure of his master: but if he do more work on his master's requisition, he receives greater wages. The *Retnácara.*

The second verse is cited by VIJNYÁNÉŚWARA, with this observation: "the Sage speaks of one who does not act according to *his master's* orders." VIJNYÁNÉŚWARA's meaning is this: though he see a proper time and place for the sale of the commodity, if *the factor*, through insolence or the like, do not sell it; or if he accept less profit, thinking that the time and place would cause him much trouble; let the master pay him what wages he pleases, not the full hire. Again; if he obtain greater profit by his own selection of time and place, a greater reward than was previously stipulated shall be given by the master to the servant.

When greater profit is obtained by his own selection of time and place, (that is, by his own exertion,) then only a greater reward shall be given; not if the greater profit were caused by *circumstances of* time and place, *without any exertions on his part.* For, were it so, less wages being paid to one who obtained less profit, and greater wages to one who obtained ample profit, the *direction for* receiving the full hire would be absurd: and the master is entitled to the greater profit obtained on his goods at the proper season.

Others explain time and place in this manner: a servant receives wages determined by the will of his master, if he deviate from the time or place thus prescribed: "build a wall in the month of *Cártica;*" or, "construct a boat on the shore of the Ganges."

LXV.

YÁJNYAWALCYA :—According to the work performed by a servant, though the whole task imposed might be too much for both *master and servant together*, must wages be given; if either of them could have performed it, *and it be performed*, let the promised reward be paid.

This text is intended for a rule in the case of a servant whose work and hire are thus stipulated: "ten pieces of money shall be received for building this wall." By the expression "even by both," is also implied "by many:" if it could not be performed by any one, *or* if the work be not completed by reason of sickness or the like, then wages must be given in proportion to

to work done, as determined by arbitrators: in proportion to the work which each servant has performed, let the master pay him wages. Neither shall the ten pieces of money be paid, as had been promised; nor shall payment be withheld for the work partially done. If the work can be performed; if it be performed by both, or by many servants, the promised or stipulated recompense shall be paid, and divided amongst them. Neither shall the whole reward promised be paid to each; nor shall each be paid in proportion to his work. Such is the opinion of VIJNYÁNÉSWARA.

Here 'wages in proportion to his work' do not signify in proportion to the part of the work *done* and to the *whole* wages; but a recompense to be paid according to the number of days: for VIJNYÁNÉSWARA, in the latter part *of his gloss*, means daily hire, by the term 'in proportion to work.'

Though the whole task (which could only be performed by many persons) could not be accomplished by both *master and servant together*, wages must be given in proportion to the work done; but if it could have been performed by both master or servant together, or by either of them, in that case the fine prescribed must be paid. Such is the sense of the text, and that *fine* will be declared in its place. The *Retnácara*.

The meaning of the gloss is, if one or two persons erroneously undertake to perform, on stipulated wages, a task which could *only* be performed by many, the servant shall certainly receive the proper hire of his labour, though the work be not completed. But, if it could have been accomplished by the master or servant, then, should it remain unperformed in consequence of neglect or the like, the servant shall pay the fine prescribed.

Both interpretations may be admitted. In the *Párijáta the text is expounded*, "if the task require the labour of both *master and servant*, the "servant shall receive wages in proportion to the work performed by him; "if the task could be performed *by the servant alone*, and it be performed, "let the promised reward be paid." This interpretation of both parts *of the text* is omitted by the other two commentators.

LXVI.

VRÍHASPATI:—Let the man who guides the plough-share have a third or a fifth part *of the grain, if no special agreement be made.*

The disjunctive "or" separates two cases declared in the following text:—

LXVII.

VRÍHASPATI:—Let *the ploughman*, to whom food and vesture are given, take a fifth; and let him who is supported by the profit *alone*, receive a third part of the grain produced.

"Supported by profit;" by the fruit of labour, by the grain produced, and the like: meaning him who has no such allowance of food and vesture.

A tenth part, as directed by NÁREDA (LXII 2), is assigned to a servant different from the ploughman. The *Retnácara*.

In this exposition the *Chintámeni* concurs. The meaning is this: the hire mentioned is allowed to a servant employed in cutting grass preparatory to tillage. Or the text of NÁREDA may relate to pulse and the like, which require sowing and watching only, *not tillage*.

LXVIII.

ÁPASTAMBA:—A servant in tillage, who abandons his work, shall be beaten with a staff; so shall a herdsman *who neglects his duty*, and his own cattle shall be seized.

A servant in tillage, or ploughman, who abandons his work, or absconds, shall be beaten with a staff. So shall a *negligent* herdsman; and moreover, the herdsman's cattle shall be seized. The *Chintámeni* and *Retnácara*.

LXIX.

Vriddha MENU:—*The* wages *of seamen* shall be such as are *usually* given by men who understand sea voyages, and who know countries, and seasons, and commodities; unless there be a special agreement.

"Men who understand sea voyages;" meaning generally persons well acquainted with commercial affairs. The *Retnácara*.

The *Chintámeni*, in fact, gives a similar exposition. It is consequently the author's opinion, as some lawyers remark, that this, with the tenth part *of the profit* directed by NÁREDA and YÁJNYAWALCYA (LXII 2, and LXIII), constitutes an alternative.

But others hold, that this text concerns the wages of seamen, because it mentions sea voyages. In other cases, the wages shall be a tenth part of the profit; but the wages of seamen shall be the same which are *usually* given, by merchants trafficing by sea, to their servants; or if the wages have been previously settled, they shall be paid *accordingly*. By the restriction of "men who know countries, seasons and commodities," it is implied, that wages determined by any person whose intellect is disturbed shall not be paid.

LXX.

NÁREDA:—The implements *of work*, and whatever is intrusted *to servants* for their master's business, should be diligently preserved; not wickedly *neglected* by any means.

"Implements of work" (the tie of the yoke and other implements of husbandry), and "what is committed *to servants* for their master's business" (such as grain and the like for agriculture), should be diligently kept by the servants, not wickedly or knavishly *neglected*. The *Retnácara*.

"Agriculture," in this gloss, signifies 'husbandry and the like:' for NÁREDA has premised the factor, the herdsman, and the servant in husbandry (LXII 2).

"The implements of work:" the tie of the yoke and the like, which are necessary or useful in work, and which are intrusted *to the servants* for the business proposed, (be it agriculture or any other occupation,) must be diligently kept by the servants. If they be destroyed even by the act of GOD, *but* in consequence of the servant's neglect, it is a fault on the part of that servant. This inference seems just.

LXXI.

VRIHASPATI:—If the servant do not perform any part of his master's business, he forfeits his wages; and may afterwards be sued *for a fine:*

2. And if a servant, having received his wages, perform not his work, though able to do it, he shall pay twice the amount as a fine *to the king;* and *the full amount of* those wages *to his master.*

If a servant able to perform his task, having undertaken to execute work required by his master, do not perform any part of it, (that is, not the smallest part of it,) in that case he forfeits his wages. He loses the amount of the wages verbally promised. Does it mean, "he shall pay that amount;" since this corresponds with the text of YÁJNYAWALCYA (LXXII)? No; for that is signified by the expression "and may afterwards be sued;" *literally,* a contest subsists. By "contest" is meant a law-suit: and by saying that a law-suit afterwards subsists, a fine is intimated; and that fine should be deduced from the text of YÁJNYAWALCYA (LXXII.)

"And if a servant, &c." (LXXI 2): since he has actually received wages, he shall pay twice the amount as a fine to the king, and their full amount to his master.

LXXII.

YÁJNYAWALCYA:—A servant who desists from working after he has received his wages shall pay twice their amount, and their full amount *only* if he have not received them: the implements of husbandry must be diligently kept by the servants.

He shall pay twice the amount of those wages, *in the first case;* and their full amount, (not more than was agreed; not twice their amount;) *in the second.* Therefore twice the amount *of the wages* shall be paid by him who begins the work, and then desists from it after receiving his wages; and the full amount *only* if he have not received them.

"The implements of husbandry," *namely,* the spade, the ploughshare, or the like, must be diligently kept or preserved by the servants, that is, by the ploughmen and the rest. The *Retnácara.*

The payment of the full amount, or of twice the amount of his wages, should be understood as a fine to the king. "The implements must be diligently kept," as also directed by NÁREDA (LXX); this should be understood of a servant employed in labour.

VIJNYÁNÉSWARA, after stating this exposition, proposes another construction of the last hemistich, in this manner: "or he shall be forcibly compelled to perform his work, after paying him the wages promised;" as directed by the following text of NÁREDA:—

LXXIII.

NÁREDA:—A servant who refuses to perform the work he has undertaken, shall be compelled to fulfil his agreement, first paying him his wages; but, if he persist in his refusal after receiving his wages, he shall forfeit twice their amount.

LXXIV.

CÁTYÁYANA:—He who begins, but does not perform, his task, shall by force be compelled to finish it; if he refuse to do so, he incurs an amercement.

LXXV.

VRĬHASPATI:—He who has promised to perform work, and does it not, shall be compelled even by forcible means; and if he *still* refuse to complete it, he shall be fined two hundred *panas* of copper.

This promise, *or agreement*, from the correspondence of the text of CÁTYÁYANA (LXXIV), extends to the commencement of the work.

The *Retnácara*.

The texts must be distributed to different cases, for the purpose of reconciling the *seeming* contradiction between this fine of two hundred *panas*, and the fine of eight *crĭshnalas* or *racticás*, directed in a text which will be quoted from MENU (LXXVI): and their inconsistency with the text of YÁJNYAWALCYA, which directs a fine equal to the amount of the wages (LXXII), must also be explained.

For this purpose, some hold, that, if a man, not having received his wages, go elsewhere through avarice, he shall be fined their full amount; if, through indolence, he do not perform the work, two hundred *panas;* but if he do not begin the work, eight *crĭshnalas* or *racticás*. Others think, he shall be made to pay the full amount, in the case of wages *settled* by contract; and the fine is two hundred *panas* and the like, in the case of wages by the month or the like. Others again affirm, that twice the amount of the hire is paid to the master, and two hundred *panas* to the king: and in like manner, the full amount of the wages, twice their amount, the seventh part and so forth (LXXXVII) are payable to the master; and the two hundred *panas*, and other fines, to the king.

If it be said, that in a text above quoted (LXXI) a forfeiture of wages is ordained, which is inconsistent with the direction for compelling the servant *to perform the work* (LXXV); it is reconciled from the rule propounded by CÁTYÁYANA (LXXIV): paying his wages, he may by force compel him; but if he *still* refuse to perform it, he incurs the forfeiture of his wages, and an amercement.

LXXVI.

MENU:—That hired servant, or workman, who, not from any disorder, but from insolence, fails to perform his work according to his agreement, shall be fined eight *crĭshnalas* or *racticás* of gold, and his wages or hire shall not be paid.

"Not from any disorder;" not from the act of GOD or of the king, by which he might be disabled from performing it. The *Retnácara*.

LXXVII.

MENU explains *crĭshnala*:—The very small mote, which may be discerned in a sunbeam passing through a lattice, is the least visible quantity, and men call it a *trasarénu:*

2. Eight of those *trasarénus* are supposed equal in weight to one minute poppy-seed; three of those seeds are equal to one black-mustard seed; and three of those last, to a white-mustard seed:
3. Six white-mustard seeds are equal to a middle-sized barley-corn; three such barley-corns to one *crĭshnala;* five *crĭshnalas*, or *racticás* of gold, are one *másha;* and sixteen such *máshas*, one *suverna*.

The whole meaning is, that a *crĭshnala* is a quantity of gold weighing one *racticá*, or seed of the *gunjá*.*

Cullúcabhatta says, servants shall be fined eight *crĭshnalas* or *racticás* of gold, and the like, according to the work. By the term "and the like" must be understood *racticás* of silver, copper, or other *metals*. He thinks the denominations, as far as *crĭshnala*, are common to all metals; and the name of *suverna* only peculiar to gold.

The same legislator declares the rule, when a servant, from disease, not from insolence, fails in performing the work.

LXXVIII.

Menu:—Yet, whether he be sick or well, if the work stipulated be not performed *by himself, or by another for him*, his whole wages are forfeited, though the work want but a little of being complete.

If he do not perform it himself, or by means of another. "Though it want but a little;" though a trifle only be unfinished. The *Retnácara*.

Having abandoned his work on account of sickness, if he do not complete it when recovered, no wages shall be paid for the work performed, although a trifle only remain *to be done*. Cullúcabhatta.

Here, and in the text of Náreda (LXXIX), the whole wages are mentioned.

LXXIX.

Náreda:—He who *is hired for a time*, and leaves his work before the expiration of the full term, shall forfeit all his wages: *but*, if he desist by the fault of his master, he shall receive as much as was stipulated.

Therefore, if he leave the work by his own fault, no wages whatever shall be paid; but if he desist by the fault of his master, before the full time has elapsed, he shall receive so much wages as were stipulated.

The *Retnácara*.

Others say, the text of Menu (LXXVIII) concerns wages settled by contract; thus, if wages be stipulated according to the work, without any time specified, and if the work be not performed in consequence of disease or the like, even though it want but little of being complete, the servant shall not receive the wages stipulated. But the text of Náreda (LXXIX), *they think*, relates to one not prevented by disease. However, that has not been stated by respected authors.

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* The *abrus* of Botanists.

LXXX.

VISHNU :—A servant, or *workman by time*, who leaves the work before the expiration of the full term, shall forfeit the whole price of his labour, and pay one hundred *panas* to the king. Whatever may be injured by his fault, he shall make good to his master; unless the injury happen by the act of GOD or of the king. If the master dismiss the servant before the full time has passed, he shall pay him his whole wages, and a hundred *panas* to the king, unless the servant were in fault.

CHANDÉSWARA explains wages or hire (*the literal sense of* bhrĭti), hire to be earned by work; a servant, who leaves that (*meaning one who leaves his work*), unless by the fault of his master, shall forfeit the price of his labour. Thus a servant, leaving the wages which were paid him, leaving a part of them *unearned* by comparison with the quantity of work performed, shall forfeit his whole wages; and pay a fine of one hundred *panas* to the king. In the *Chintámeni* the text is read, "a servant, who leaves his work "*(carma)* before the expiration of the full term." The sense is obvious.

LXXXI.

MENU :—But, if he be really ill, and, when restored to health, shall perform his work according to his original bargain, he shall receive his pay even after a very long time.

But he who, leaving his work on account of sickness, performs the stipulated task when he recovers health, shall receive his hire even after a very long time. So the *Retnácara*, with which CULLÚCABHATTA concurs.

If he quit his work when ill, but, when restored to health, perform it even after a long time, he shall receive his pay. Thus the *Chintámeni*, with which the *Mitácshará* coincides.

As for the exposition, that a servant who quits his work from indisposition, and performs it after his recovery, shall receive his pay for the period of his indisposition, even though it be a very long time, that would be wrong: for pay cannot be due without work performed; and it is inconsistent with *the commentaries of* many authors.

LXXXII.

NÁREDA :—If a load be damaged by the carrier's fault, whatever is lost he shall be compelled to make good, unless the injury happen by the act of GOD or of the king.

"A load;" a thing on which the hired servant is employed. "Damaged;" *literally*, broken. "By the carrier's fault;" by the fault of the hired servant. The *Retnácara*.

Consequently this text does not concern a carrier alone, but any hired servant. It should be considered, that, since the term "carrier" must necessarily have a general sense, it may relate to every sort of servant or labourer.

LXXXIII.

Vriddha MENU:—A servant shall pay the full value of what he has lost by mere inattention; twice the value of what he has lost by gross negligence, or malice; but he shall not be forced to pay any thing for what robbers have seized, for what has been burned, or for what an inundation has carried away, *unless he were himself blameable.*

The text is merely an instance given. Thus, if the loss happen by the servant's fault, but unintentionally, he shall be compelled to pay the full value; if it happen by his fault, and intentionally, twice the value: but, for a casual loss, without any fault on his part, he shall not be forced to pay any thing. This virtually is the meaning. The *Retnácara* and *Chintámeni.*

LXXXIV.

VRĬHASPATI:—If a servant, by the command of his master, and for his benefit only, do an improper act, the offence shall be imputed to the master.

"For his benefit *only*;" for the benefit of the master *alone*. "An improper act;" such as theft or the like. "The offence shall be imputed to the master;" not to the servant. The *Retnácara.*

It appears from the condition, "by the command of his master," that, if he perpetrate a crime not commanded by his master, even though he intend his benefit only, the blame is not imputed to the master. But if it be argued as proper to affirm, that the master does not partake of the guilt, when a servant, even by his master's command, does an improper act for no advantage, or for his own benefit only, *the answer is,* when a master commands a servant to commit a robbery or the like, for no advantage to himself, still he derives benefit *from the act* by *some* gratification *it affords him;* and if he authorize it for the servant's benefit, he derives *some* advantage, by the saving of wages or the like. But if the servant ask, "may I steal that man's goods?" and the master reply, "steal them," reflecting, "he is poor, what motive have I for opposing his wish?" in that case the master, though he authorize the theft, does not partake of the guilt.* For this purpose the Sage has said, "for his benefit only."

LXXXV.

YÁJNYAWALCYA:—A carrier shall be forced to make good a load *damaged or* lost *by his own fault,* not by the act of GOD or the king; and if he disappoint the purpose *for which he is employed,* he shall be compelled to pay twice the amount of his wages.

Not by the act of GOD or the king:" this denotes a fault on the part of the servant. The *Retnácara.*

A load, to which no accident happens by the act of GOD, or of the king, is so described. If that be lost by a carrier through inattention, he shall be forced to make good the amount of the loss which is incurred on that load.

* I hope no native lawyer will ever be guided by this strained interpretation. T.

Again, he who previously undertook a task requisite for the purposes of a master busied in preparations for nuptials, when the auspicious day is near, but afterwards disappoints the purpose by refusing *to perform the work*, shall be compelled to pay twice the amount of his wages. The *Mitácsharà.*

Here "purpose" is employed in a general sense: twice the amount of the wages must be paid for the mere disappointment of any business previously undertaken; but if the business cannot fail, the penalty is the full amount of the wages *only*. So others, who follow the *Mitácsharà*. But the author of the *Retnácara* says, the word "carrier" should be brought forward; "a carrier, having received his hire, and not departing at the time when the business should be done, &c." In effect there is no difference. Thus the amercement for him who abandons his work has been already declared; the penalty, in the case of failure of the business in consequence of his not performing his task, is now propounded: loss is here the subject. Such is the meaning of both *commentators*. This penalty may be incurred if the business might be greatly injured; for the servant does not disappoint it, if it be accidentally accomplished. The following text makes this evident:

LXXXVI.

Vriddha MENU:—He who does not perform his task at the full time *agreed on*, and disappoints the business, shall be forced to pay twice the amount of his wages; and another shall be employed in his stead.

LXXXVII.

YÁJNYAWALCYA:—One who declines *the work* when yet distant, *shall be compelled to pay* the seventh part of the wages, or the fourth part if *he decline it* on the way; but he who quits it half way, shall be forced to give the full amount of the wages.

"When *yet* distant," "on the way," and "half way," are explained by the circumstances of another servant being found with ease, with difficulty, or with greater difficulty.

In these instances, according to the circumstances of each case, the carriers shall be compelled to pay a seventh, or a fourth part, or the full amount of their hire. A master, also, dismissing a servant at these periods, shall be forced to give the same. CHANDÉSWARA.

This is *apparently* inconsistent with the payment of twice the amount of the wages, as abovementioned; but is reconciled according to CHANDÉSWARA, by directing the payment of twice the amount of the wages, if a servant cannot be found by any means. If this be said to contradict the text of *Vriddha* MENU (LXXXVI), *the answer is*, the text of *Vriddha* MENU should be understood as relating to a case in which it is apparently impossible to find another servant, but in which, after desertion, another servant is accidentally found. If another servant can be immediately found, a seventh part must be paid by him who abandons work to which he has himself agreed: but he must pay twice the amount of his hire, if he decline the work at the moment when it should be commenced. Again, he who deserts his employer when a distant portion of the way remains untravelled, shall pay a fourth part of his wages, or their full amount if he quit him half-way. The master also, in similar circumstances, shall pay the proportions

of the hire mentioned in this text. Such is the opinion expressed in the *Mitácshará*.

The meaning is this: at home, a master occupied in other business (*and therefore at leisure from the business in question*) can find another servant without trouble; the fine is therefore a seventh part, because the offence is very inconsiderable. A servant, who insolently says at the moment of departure, "I will not perform *the contract*," offends greatly, and shall therefore be fined in twice the amount of his wages. Travelling on the road, and leaving his work at a near place, he does not insolently refuse the *work*, neither can another servant be found without trouble; therefore he shall be fined a fourth part of the wages: but, deserting *his employer* at a distant place, he is a greater offender, and shall therefore be amerced in the full amount of his wages. Thus the text (LXXXVII) is expounded in the same manner, *both* by CHANDÉSWARA, and by the author of the *Mitácshará*. But, the case of one who disappoints the purpose *for which he is employed* (LXXXV), is different.

LXXXVIII.

Matsya-purána :—He who does not perform *business of* science or art, after receiving a consideration, shall be amerced in the full amount of it, by a king who knows the law.

Here the consideration must be repaid to the person who employed him for science or art; as it is repaid to a master by a servant who does not perform the work: but a fine to the king is not here mentioned. However, it is directed under a former head.

LXXXIX.

NÁREDA :—The owner of goods, who hires beasts for draught or burden, and takes them not, shall be compelled to pay a fourth part of the hire; or the full amount, if he leave them on the road.

2. And so shall a carrier forfeit his hire, if he transport not *the goods*.

"The loader:" the owner of goods. "Hiring;" procuring on hire. "Beasts for draught or burden;" horses and the like, or oxen and the rest. "A carrier;" one who receives hire for the carriage of goods.

CHANDÉSWARA.

But others say, since the loss of the whole hire, or of a fourth part, is directed in case of desertion on the road, he who declines the work when *the time for performing it is* yet distant, should pay a seventh part; and the rule, in regard to the forfeiture of a fourth part, should be understood as explained in the former text (LXXXVII).

XC.

Vriddha MENU :—Should a merchant, *having hired a servant for a certain journey*, sell his goods by the way, and discharge the servant, *wages* must be paid even for the part of the way which they never passed; but the servant shall receive half only of the hire *which would have been due if they had gone to their journey's end*.

"The part of the way which they never passed;" so much of the journey as remains untravelled. The *Retnácara*.

"Even for the part of the way which they never passed;" to the servant, though he have not travelled the whole distance previously stipulated, wages shall be paid for the work done; but half, or a portion only, of the hire, for the part of the way which they have not passed.

The *Chintámeni.*

On the question, whether wages shall be withheld because they have not gone the *whole* journey? the text declares wages shall be paid, because the servant is not in fault. This may be stated as meant in the *Retnácara.* The word "half" is not here intended for equal parts, but a portion in general, as interpreted in the *Chintámeni;* "he shall receive a part of the wages for going that journey, though he have not travelled the *whole* distance:" and this is reasonable, since the penalty of a fourth part of the hire is directed for desertion on the way: but in this case something less than a fourth part must be paid, since he discharges the servant because he has not occasion *for his service.* And this text may be *literally* applied to the case of his selling the goods half-way.

XCI.

CÁTYÁYANA:—And if the goods be stopped or seized on the way, the servant shall receive wages for so much of way as has been passed by him.

"Be stopped;" be sold in consequence of being stopped by any person.

MISRA and CHANDÉSWARA.

The sense is, that, since the dismission of the servant does not arise from the merchant's own choice, greater wages shall not be paid.

XCII.

NÁREDA:—A servant stipulating *wages for a journey*, but leaving the cart on the way, shall be forced to give a sixth part of those wages; but the man who employs labour, and pays not *its hire on demand*, must *afterwards* pay it with interest *computed from the sixth month after the demand.*

He who stipulates wages on an agreement in this form, "I will go *the journey*," but leaves on the way the goods for which the cart was hired, shall be compelled to give a sixth part of the amount stipulated as wages. Such is the sense of the first part. The *Retnácara.*

And this must be explained by a particular application of the text *to a special case*, like the seventh part and the like ordained by YÁJNYAWALCYA and others (LXXXVII and LXXXIX).

But the master, if he do not pay the hire of the journey to the servant who goes *that journey*, shall be compelled to pay it with interest.

The *Retnácara.*

It should be mentioned, that interest on wages accrues six months after demand (Book I, v. LVI). Otherwise they do not bear interest (Book I, v. LXXI.)

XCIII.

VRĬHASPATI:—The master who pays not the hire of labour after the work is performed, shall be compelled by the king to pay it, as well as a proportionate amercement.

It should be here understood, as in the preceding text, that he must pay it with interest.

XCIV.

CÁTYÁYANA:—The master who leaves in the way a tired or sick servant, without taking care of him in a village for three days, shall pay the first *or lowest* amercement.

The master who, not taking care of him in a village for three days, leaves a tired or sick servant, shall be fined by the king. The *Retnácara.*

By the word "leaves," want of care is implied. That it would be an offence in a tired servant to leave the work, *though* able to carry the burden after recovering from his fatigue, has been positively declared by former texts.

Harlots have been considered by CHANDÉSWARA and others, under the title of Hire; wherefore they are also noticed *in this work.*

XCV.

NÁREDA:—A dancing girl, having received her pay, yet refusing to attend, shall pay twice as much as she received; and if her employer refuse to admit her, he shall forfeit what he had paid.

XCVI.

Smriti:—But if the harlot attend not when sent for, because she is indisposed, or fearful, or fatigued, or employed in the service of the king, she is blameless.

XCVII.

Matsya-purána:*—A harlot who goes to another man after receiving hire, and repays not the money received, shall be compelled to pay the lecher's fee, *or twice the amount.*

2. A man approaching a woman without paying her hire, or approaching her in an unlawful manner, or scratching her with his nails, or the like,

3. Or unnaturally abusing her person, or causing her to be approached by many, shall be compelled to pay eight times the amount of the hire *promised*, and an equal fine.

4. He who, on the pretence of one person, brings a harlot for the use of another, shall be amerced by the king in one *másha* of gold.

5. If a man employ a dancing girl, and give her no pay, he shall be compelled to give her twice as much as she ought to have received,

* I might have been justified in omitting these laws, by the remark of SIR WILLIAM JONES, when translating other texts under this head from the *Vivádárnava Sétu*, that "the rest are not worth inserting." I am certainly justified in softening the original indelicacy, and in omitting a gross commentary on these and on the preceding texts; for they are surely misplaced in a digest of law on contracts and successions. T.

and shall pay a fine to the king of the same amount. Thus justice is not violated.

6. The penalty ever to be paid by many persons approaching the same woman, is twice the amount *of what she should have received if approached by one only*, and each of them shall likewise pay twice the amount as a fine to the king.

XCVIII.

NÁREDA :—If a dispute should arise among the lascivious frequenters of her house, in respect of matters occurring there, the wise have declared, that it shall be determined by the principal harlot.

The hire of a house or the like is similar to the hire of labour; it is therefore discussed by authors in this place. That shall be now propounded:

XCIX.

NÁREDA :—He who dwells in a house which he built on the ground of another man, and for which he pays rent, shall take with him, when he leaves it, the thatch, the wood, and the bricks;

2. But if he live without paying rent on the ground of another without the owner's assent, he shall by no means, when he quits it, take away the thatch and the timber.

"Rent;" a consideration for abode. The *Retnácara*.

It may be explained "hire" and so forth.

He who dwells in a house built at his own charge, or by his own labour, on the land of another, used for the site of dwelling-houses, may, provided he paid rent for it, take away his own wood, and the bricks of walls and the like, when he shifts his abode; or he may sell the wall as it stands. But if he pay no rent whatever, he shall not take the grass, wood, bricks, and other component parts of the house.

The hire of a house is common in royal cities: in other instances also, what is usually paid in the same form with revenue, by tenants residing on the land of *Bráhmanas* and the like, is merely hire or rent: for it is not truly revenue, since revenue or taxes are the sixth part *of the produce* and the like, *payable to the king, as ordained by the law*.

C.

NÁREDA :—The grass, wood, and bricks, which are thus removed, belong to him who leaves the ground, provided he paid rent for the spot, and not otherwise.

In the former texts it had been mentioned, that, *in one case*, he may take them; *in the other*, he may not take them. That *distinction* is grounded on property, and on the want of property. These, therefore, are now explained in this text.

"If he paid rent;" if he paid the price of the abode *granted to him*. The *Retnácara*.

CI.

CÁTYÁYANA :—He who hires, at a fixed rent, a house, a pool of water, a market-place, or the like, shall be compelled, *in a court of justice*, to pay the rent of it, until he restore it to the owner.

"A pool of water;" one made by another man, and not consecrated, *but* intended for *use in* this world. The *Retnácara* and *Chintámeni*.

It appears, therefore, that no rent should be paid for a consecrated pool to him who made it.

CII.

NÁREDA :—He who hires, at a fixed price, an elephant, a horse, a bull or cow, an ass, or a camel, shall be made to pay for the hire of it as long as he delays to restore the cattle, having used it according to agreement.

If a thing hired be destroyed, it is the possessor's fault, unless the injury happen by the act of GOD: as mentioned under the title of Deposits.

CIII.

Vriddha MENU :—He who has hired a carriage, or *vehicle of any sort*, and takes it and goes away with it, but *afterwards* refuses to pay the hire, shall be compelled to pay it, even though he never used the carriage.

"A carriage" generally; meaning only a vehicle of any kind. "Even though he never used it;" even though nothing have been carried on it. The *Retnácara*.

In the *Chintámeni* also, the last remark occurs; and it is said, a vehicle in general is alone meant. But the same rule may be applied to a house and the like.

CIV.

NÁREDA :—Things hired *for a time* at a settled price, let the hirer give back when the time has elapsed: whatever be broken or lost he shall make good, except in the case of inevitable accident or irresistible force.

"Settled price;" hire. "Inevitable accident, or irresistible force;" the act of GOD, or of the king. Therefore, a carriage and the like, broken without the act either of GOD or of the king, must be made good by the hirer. When the time has elapsed, the thing hired should be restored to the owner. The *Retnácara*.

Consequently, should a carriage or the like, hired at a settled price, be lost without the act of GOD or of the king, it is the hirer's fault, as appears from this law. But MISRA expounds the text, "if it be not restored when the time has elapsed, and it be destroyed by time or the like, without the act of GOD or of the king, it must be made good by the hirer." In his opinion, a thing lost or injured by the fault of the hirer, without the act of GOD or of the king, must be made good by the hirer; as appears from texts cited in Book II, on the subject of Deposits and other Bailments.

CHAP. II.

ON THE

NON-PERFORMANCE OF AGREEMENTS.

ALTHOUGH non-payment of wages and hire occur among disputes between master and herdsman, (for which reason this title is delivered by VRĬHASPATI immediately after that of non-payment of wages, and disputes between master and herdsman are placed first in the *Retnácara* and other works,) yet non-performance of agreement has been propounded by MENU immediately after non-payment of wages: wherefore it is first inserted *in this digest*, (*before contests arising between the owners and keepers of cattle.*)

I.

MENU´:—This is the general rule concerning work undertaken for wages or hire: next, I will fully declare the law concerning such men as break their promises.

"This general rule" *is fully declared:* although the wages of herdsmen have not been yet propounded by MENU, the rule in case of non-payment has been delivered, and the wages will be explained *under a subsequent head.* "Next, I will fully declare, &c." breach of promise, such as the non-performance of actual agreements, suggested *for consideration* by breach of compact between master and servant, is *next* propounded.

The text is thus expounded by CULLÚCABHATTA; "this rule concerning work, under the title of Non-payment of Wages, has been completely delivered: I will next declare the rule of punishment for those who violate their engagements."

II.

VRĬHASPATI:—This conduct has been prescribed to masters and servants; now learn concisely the rules concerning promises.

"Prescribed to masters and servants," including master and herdsman; for that title of law is previously delivered by VRĬHASPATI. The present title of Non-performance of Agreements is expounded by CULLÚCABHATTA (in *his gloss on* the fifth verse of the eighth chapter of MENU) "breach of an agreement made." NÁREDA explains it:

III.

NÁREDA:—The *general* rule settled among irreligious men, and among citizens and the like, is named a compact; *and* the title of law concerning disputes arising thereon, is called breach of compact.

"*Páshenda*, or irreligious;" excluded from the triple *Véda*, as the *Yavanas* and others. "Citizens;" townsmen. "And the like;" this term intends companies of traders, artisans, &c. "The rule settled," as will be mentioned. An agreement for stipulated duties, violated by non-performance, *is the subsequent title*. The *Retnácara*.

Thus the breach of a general agreement, in this, or other form, "we will join to repel thieves and robbers," is a breach of promise. An agreement for stipulated duties is a compact; non-performance of it is a breach of compact; and the government of those who break their engagements, forms a title of law. A similar exposition is given in the *Mitácshará*.

IV.

YÁJNYAWALCYA:—Having erected a building in the town, and endowed it, and having placed there *Bráhmanas* learned in the three *Védas*, let the king enjoin them to observe their duty.

Having erected a building, or house of masonry, or the like, in the town or city, and having placed there *Bráhmanas* learned and virtuous, let him give this injunction, "observe your duty."

Having erected an endowed building; an edifice enriched by a grant of gold or the like. Such is the meaning, on the concurrent exposition of the *Mitácshará* and *Retnácara*. Endowed with land, money, or the like, whereon the priests residing there may subsist. The intention is, that he should assign land, money, or the like, for their maintenance. The Sage declares what should be done by *Bráhmanas* so enjoined to observe their duty.

V.

YÁJNYAWALCYA:—Duties which are stipulated or seasonable (*for* sámayica *may bear either sense*), or prescribed by the king, and *which are* not inconsistent with their own *regular* duties, should also be diligently observed *by those priests, and enforced by the king*.

Duties arising from compact, or occurring from season, and consistent with moral and civil law, such as care of cattle, preservation of water, management of temples, and the like, should be diligently observed. And the king should enforce the observance of seasonable duties, not inconsistent with *regular* duty, such as the entertainment of all travellers, and a rule that horses and the like shall not be carried to the dominions of his enemy. The *Mitácshará*.

It follows, that the priests collectively, and the king, are the persons by whom these duties should be observed. But "seasonable" is explained in the *Retnácara*, '*rites* for the happiness of society.' Such are monthly benedictions pronounced for the king; and monthly deprecation; and similar duties prescribed by the sovereign.

Others hold, that YÁJNYAWALCYA here explains the sense of the word, "duty," in the expression "enjoin them to observe their duty;" acts which are seasonable, or prescribed by the king, and not inconsistent with their own regular duties. Thus it follows, from the word "also," that the duties of their tribe and order must certainly be observed: the prescribed acts of their tribe and order, seasonable duties, and those commanded by the king, are intended by the term "their duty." Seasonable acts have been explained by authors, as above. "Duties or rules prescribed by the king" are such

as the following; "for this man, though not degraded, yet fallen under the king's displeasure, no sacrifice shall be performed." These rules must be observed, if they be not inconsistent with regular duty. Therefore, an injunction to attend at the king's gate from dawn to evening, or to sacrifice for all the inhabitants of a town, need not be observed; for it would obstruct the whole of the rites constant and occasional, or be incompatible with sacrificing for twice-born classes only. *Yet*, on particular occasions, an obstruction to *the performance of* constant rites may be admitted. As for the opinion, that a duty occurring with the season, such as deprecatory rites and the like, must necessarily be performed, though not promised, it is wrong: for it is founded on no authority, and punishment is directed for breach of promise only.

VI.

VRĬHASPATI:—Assembling priests endued with knowledge of the *Véda*, learned teachers of the scripture, and priests who keep a perpetual fire for oblations, let the king establish them in that place, and and assign their subsistence:

2. Let him grant to them, in his own dominions, houses and land exempt from taxes, declaring, by a written grant, that the royal dues are remitted:
3. They must perform, for the townsmen, the constant, occasional, and voluntary rites, and those which are deprecative, or expiatory, and they must decide doubtful cases.
4. A compact, formed on consultation among the inhabitants of a town, the companies of artisans, and the several classes of men, must be observed in a time of alarm, and at the season of rites *performed in common*, and also *on other occasions*.
5. If there be apprehension of highway robbers or thieves, it is considered as a common danger; and should be repelled by all, not in any instance by one alone.
6. First establishing mutual confidence, by a solemn oath, by a written contract, or by the attestation of witnesses, let them next proceed to the business *agreed on*.
7. Neither men influenced by *causeless* enmities or passion, nor such as are foolish, indolent, timid, rapacious, diseased, or aged, nor infants, may be appointed *chief* advisers in affairs *(cárya chintaca)*;
8. But those who are pure, who know the scripture and their *own* duties, who have dominion over their passions, who are capable, who sprung from honest families, and are skilled in all affairs, may be appointed highest *of the confederacy*.
9. Two, three, or five persons should be appointed advisers *(hitavádin)* of the association; their counsel should be followed by the inhabi-

tants of the town, the companies of artisans, and the several classes of men.

"*Srótriyas;*" *learned* teachers of the *Véda*. "Houses and land" (VI 2), in the active *instead of the oblique* case, may be reconciled from the license of a Holy Sage. "In a state of exemption;" the royal dues being remitted.
CHANDÉSWARA.

"They must perform," &c. (VI 3); such a practice occurs in some countries, where a person is commissioned, and a priest is appointed, to perform the constant and other rites for the townsmen: and it appears that the priest is vested with property, consisting in that office, by the authority of a mandate from the reigning king.

"And decide doubtful cases" (VI 3); cases relating to judicial contests. This is a just interpretation, and consistent with ordinances.

"The inhabitants of the town" (VI 4); *literally*, the town; intending the inhabitants collectively. "Companies of artisans;" meaning a body or multitude of persons belonging to the same tribe, and following the same profession. "The several classes;" *Bráhmanas* and the like collectively.
CHANDÉSWARA.

"Companies of artisans;" workmen or artisans collectively.
The *Chintámeni*.

What is done after consulation, by these bodies and companies, or by any of them, is a compact or agreement. The Sage explains the motive and season of such an agreement ("in a time of alarm" &c., VI 4). "Alarm;" apprehension, or suffering, from robbers or the like. "Rites to be performed *in common*," such as fasts and other sacraments. So MISRA. CHANDÉSWARA also expounds it similarly. By the words "or the like," it is indicated, that an association should also be formed if injúry be suffered from the inhabitants of a different town, or from other inhabitants of the same town. By the expression "and also," it is intimated, that they proceed in the same manner on other occasions, such as general rejoicings and the like.

Thus it appears, that an agreement should be made for repelling robbers and the rest. The motive of a compact is thereby declared; the *proper* "season" is obvious, (corresponding with the motive:) he declares the form *in a subsequent verse* (VI 6).

"A solemn oath;" ordeal, as the contract of water which has touched *the images of* potent deities. The meaning of a "written contract" is obvious. "Attestation of witnesses;" *literally*, intermediate persons; intending persons who become witnesses of the compact, and are not partial favourers of any one. The literal sense of the term intermediate, (*medhyast'-ha,*) is one who stands between (*medhyé tish't'hati*).

Thus any one of these three modes may be employed for the purpose of proving the agreement at a subsequent time. The construction of the sentence is, "establishing confidence by any one of those three modes."

Among those inhabitants of the town and the rest, if all had *equal* authority, no benefit would arise from their various degrees of wisdom; therefore some should be invested with chief authority, as advisers in affairs, to show the best *mode of proceeding*. What descriptions of persons they should not invest with principal authority, the Sage declares (VI 7). "Men influenced by *causeless* enmities; *literally*, inimical:" he who pro-

ceeds to an act without attention to the consequences of it, is said to be "influenced or impelled;" and the suffix here employed bears the same sense with the term thus explained by JUMERA.

"Influenced by passion" (VI 7); under the impluse of excessive lust or anger. "Foolish:" the term is explained, in the *Retnácara*, incapable; but explained by GÓYÍCHANDRA, in the *Sancshipta-sára-parisish'ta*, "idiot."

From what descriptions of persons they should appoint their chiefs, the Sage declares (VI 8). "Pure," *that is, virtuous;* not deceitful. "Governing:" having dominion over their organs; void of avarice and the like. "Their counsel should be followed;" consequently a fine is incurred by a breach of their commands. This YÁJNYAWALCYA expressly declares:

VII.

YÁJNYAWALCYA:—The directions given by the advisers of the association should be observed by all; he who disobeys them, shall be compelled to pay the first amercement.

The first amercement; meaning two hundred and seventy *panas* of copper.* The *Mitácshara.*

This offence consists in disobeying the directions given by the advisers of the association; CÁTYÁYANA prescribes a fine for him who, from insolence, urges *too obstinately* his own opinion during a discussion on business to be performed.

VIII.

CÁTYÁYANA:—He who interrupts the reasonable discourse of a speaker, and allows no other to speak, and he who talks idly, shall incur the first amercement.

"Who interrupts reasonable discourse;" who thus breaks in upon it, "you talk absurdly:" one who mutters, "I also will speak, why should these talk?" "Who allows no other to speak;" *literally*, giving no opportunity; one who gives no opportunity for others to speak; or allows no other *to discourse*, and prates much *himself.* These, and he who urges bad advice, insisting that it should be adopted as good, shall pay the first amercement.

In the *Retnácara* it is explained, he who talks *idly* to the advisers of the *association*. The sense may also be thus stated; he who behaves with disrespect towards them.

IX.

YÁJNYAWALCYA:—This is the rule for companies of artisans, traders, and irreligious men, and for *various* tribes; let the king preserve their distinctions, and oblige them to adhere to the conduct above mentioned.

"Artisans;" subsisting by the manufacture of the same commodity. "Traders" *(naigama)*: this word is explained as denoting the *Páśupatas*, and other sectaries, who admit the authority of the *Véda* no further than as a good institute. "Irreligious men:" those who do not even admit the

* So the MS. It should be two hundred and fifty *panas.*

authority of the *Véda*; such are dancers, followers of BUDDHA, and the like. "Tribes;" sets of men living by the same profession, such as soldiers and the like. For these four descriptions of persons, this is the rule, as propounded in the former text (V): Let the king preserve their distinctions; the rule of duty for the artisans and the rest: and let him oblige them to adhere to the conduct abovementioned. The *Mitácshará*.

Others take the word *naigama* in its literal sense of trader, as it is explained in AMERA's Dictionary.

Many texts delivered by YÁJNYAWALCYA immediately after that above quoted (V), will be cited in their places. By tribes are here meant other sets of men besides artisans and the rest, and different from *Bráhmanas*. The *Retnácara*.

Thus, in whatever tribe an agreement is made, by that *tribe* it should be observed; it follows, that disobedience to directions given by one who is appointed *prámánica*, or president, of barbers or the like, is a cognizable offence. This is the whole meaning.

X.

NÁREDA:—Let the king maintain the associations of irreligious men, of sectaries who detract from the authority of the *Véda*,* of companies of artisans, traders, and soldiers, and of various tribes and the like, both in a place of difficult access, and in a frequented spot.

"Companies of traders" *(púga)*; merchants and the like collectively. Others explain it an assemblage of persons of various classes, who have no determinate profession. "Companies of soldiers;" armed men collectively. "Various tribes and the like;" the term "and the like" suggests multitudes and crowds. The *Retnácara*.

The term "and the like," including all descriptions, denotes *that others are* comprehended in those *which are* noticed. The *Chintámeni*.

XI.

NÁREDA:—Whatever be their duties, their *regular* business, and prescribed rules, and whatever be the conduct enjoined to them, that *let the king* approve.

"Their duties;" their prescriptive usages. "Their business;" their proper occupation for a livelihood. "Conduct enjoined to them;" prescribed behaviour. The *Retnácara*.

"That approve;" the word king must be supplied in the sentence, "that let the king approve." Thus it is directed, that he shall not act otherwise than *is consistent with* their prescriptive usages, and so forth.

XII.

CÁTYÁYANA:—Whatever be the duty of *particular* societies, according to that let them conduct all affairs, *firmly* abiding by their own profession.

This should be understood as coincident with the prescriptive usages, or duties, mentioned by NÁREDA.

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* *Naigama:* see the gloss on the text of YÁJNYAWALCYA (IX).

XIII.

CÁTYÁYANA:—The ascertained commands of the king, not inconsistent with *regular* duty, should in the first place be exactly performed as directed by the king.

2. The sinful man, who obeys not such ordinances as are made by the sovereign, *and are not inconsistent with the divine law*, shall be rebuked and punished as disobedient to the royal command.

"Not inconsistent with *regular* duty;" the prescribed acts by each class and order. "Whatever be the ascertained command of the king" *(not repugnant to that duty)*, such should be the conduct *of the subject*. The Sage directs an amercement in case of disobedience (XIII 2): neglect of the king's commands is subjoined as the cause of the offender's being deemed a sinner. This offence consists in the breach of allegiance. VRĬHASPATI now declares the engagements of societies and the like:

XIV.

VRĬHASPATI:—"The construction of a hall, of a house of refreshment, "or of a temple, a pool or a garden, relief to the helpless and poor, "sacrificial rites,

2 "A common way, and mutual defence, shall be effected by us, "according to *our several* proportions:" if such a written contract be made, it is a binding engagement,

3. And must be observed by all. Of him who refuses *his part*, though able *to perform it*, the punishment is forfeiture of all his property, and banishment from the town:

4. And for that man who contradicts *his associates*, or neglects *his part*, a fine is ordained of six *nishcas* containing four *suvernas* each.

In the case of an agreement for the construction of a hall or the like, *which is* the highest association, if a man break his engagement, though able to perform it, he shall be punished by confiscation of all his property, and banishment from the country: and this punishment is directed for the case where he formally said, "I will perform it;" but now says, "I will not perform it." In case of neglect, another punishment is directed (XIV 4): *the first term in that text* is explained by AMERA, 'contradiction.' Thus, if a man, having previously formed an engagement, conspire with some party to break it, he shall be fined in six *nishcas*, containing four *suvernas* each; or if he be guilty of neglect, (that is, if he do not give attention to it,) he shall be fined in the same amount.

Others hold, that an adviser in affairs *of the association* is guilty of neglect if he do not coerce one who refuses *to perform his part*, and shall therefore be amerced: and any stranger also may be amerced, if he interfere to break the association.

"A common way" (XIV 2); *literally*, a family-way; a road for a family. "Mutual defence;" *literally*, resistance; *meaning* opposition to the inroads of bad men. The *Retnácara*.

XV.

MENU :—The man, among the traders and other inhabitants of a town or district, who breaks a promise through avarice, though he had taken an oath to perform it, let the king banish from his realm.

2. Or, *according to circumstances*, let the judge, having arrested the promise-breaker, condemn him to pay six *nishcas*, or four *suvernas*, or one *'satamána* of silver, or all three *if he deserve such a fine.*

3. Among all citizens, and in all classes, let a just king observe this rule for imposing fines on men who shall break their engagements.

"A town;" in its usual sense. "A district;" a number of towns. "Traders and others;" a multitude of persons following the same profession, but residing in several districts. "Having arrested" (*nigrĭhya*); this may be expounded, having admonished. Six *nishcas*, or four *suvernas*: *the words may signify*, six of those *nishcas* which weigh four *suvernas* each; to exclude other quantities, namely the *nishca* of one hundred and fifty *suvernas*, and the *nishca* of five *suvernas*. The *Retnácara*.

MISRA delivers the same exposition, and adds; "MENU here intends six *nishcas*, and has further directed a *'satamána* of silver." A *'satamána* contains three hundred and twenty *racticás*, or seeds of the *gunjá*.

CULLÚCABHATTA holds, that, according to circumstances which may aggravate or extenuate the fault, the punishment should be exile, and fines of six *nishcas* and one *'satamána*; all, or each of them.

Thus, in concurrence with VRĬHASPATI, exile *is the penalty directed* in case of refusal; a fine of six *nishcas*, in case of opposition or negligence, and a fine of one *'satamána*, in the case of a slighter offence.

"All classes" (XV 3); an assemblage of several classes.

The *Retnácara*.

XVI.

NÁREDA :—Those especially should be punished, who separate *themselves* from the association: they should undergo fear and terror, being avoided like diseased persons.

"Who separate from the association;" who violate the engagement formed by the community.

XVII.

YÁJNYAWALCYA :—Him who embezzles the property of the company, and him who violates his engagement, let the king banish from the realm, after confiscating all his effects.

"The property of the company;" the joint property of all the citizens and the like. The *Retnácara*.

VIJNYÁNÉSWARA gives a similar exposition; but adds, that, "in the case of a breach of compact or engagement, enjoined by the king, or formed by the society, if the offence be great, the penalty is banishment from the realm; but if the offence be slight, *it should not exceed* the amercements abovementioned, as propounded by MENU."

Some explain it as intending the penalty for embezzling money set apart for the purpose of building a temple or the like.

XVIII.

CÁTYÁYANA:—BHRĬGU directs, that all those who commit violences, oppose *the general will*, and dissipate the wealth of the community, shall be punished, after giving notice to the king.

"Who commit violences;" who use force against the society, by blows and the like. "Who dissipate the wealth of the community; who destroy property amassed by the association for a temple or the like. "They should be punished:" they should be fined in the amercement directed; for an amercement of six *nishcas* is ordained in case of opposition. They shall not be banished or expelled, *as the term* uchchédya *might seem to denote*. Or it may be understood, that, in case of opposition, if the offence be great, *the penalty is* expulsion.

XIX.

VRĬHASPATI:—He who injures or dissipates the common stock, or breaks his engagement, shall be banished from the town for that *offence*, even though he be learned in the triple *Véda*.

XX.

The Same.—An insulting and malevolent man, one who opposes *the society*, or commits violences, and an enemy to the company of artisans, to the society of traders, or to the king, should be instantly banished.

"Insulting;" hurting *the* minds of others. "Malevolent;" inimical.
The *Retnácara* and *Chintámeni*.

XXI.

VRĬHASPATI:—Let the chiefs of families, of associated artisans, or of tribes, whether residing in towns or forts, curse and forsake sinners.

"Curse;" punish with maledictions. The *Retnácara*.

By this text it is thus declared legal for the chief of a family, or the like, to inflict punishment on offenders.

XXII.

VRĬHASPATI:—Whatever be done by them according to their duty, whether harsh or kind towards *other* men, should be *first* approved *by their chiefs:* these indeed are considered as undoubted actors in *all affairs*.

"According to their duty;" not repugnant to it. "Undoubted actors;" undoubted *guides* in affairs. CHANDÉSWARA.

Whatever business any person, included in the association, performs consistently with regular duty, that should have been *previously* authorized by the chief.

XXIII.

VRĬHASPATI:—If they conspire, from an impulse of enmity, to injure one *of the society*, they should be restrained by the king; and actual injuries shall be punished.

Among associates, if several unite to hurt one, the king should restrain them; and if they do a wrong, by verbal deception or the like, he shall chastise them: and the punishment in this case should be exile or the like, according to the magnitude of the injury.

XXIV.

VRĬHASPATI:—If a quarrel arise between the chiefs and the communities, let the king decide it, and reduce them to their duty.

If there be a dispute between the communities and their chiefs (meaning the persons invested with authority, and called *presidents* or *prámánica*,) let the king determine the controversy according to the proof of their disobedience to their chiefs; and in consequence of his decision, either punishing or not punishing them, *or their chiefs*, according to circumstances, let him reduce them to their duty. But if the disobedience be heinous, banishment is proper.

XXV.

NÁREDA:—Promiscuous assemblies of those *persons*, military array without cause, and reciprocal injuries, let not the king tolerate.

"Promiscuous assemblies;" a superior society mingled with another of inferior rank. "Military array without cause;" without a sufficient motive, such as apprehension of danger and the like. "Mutual injuries;" reciprocal wrongs. "Those *persons*;" irreligious men and the rest, as already mentioned by NÁREDA (III). The *Retnácara*.

Soldiers and the like may carry arms even without a special motive. The sense resulting from the text is, that the king should restrain all others from *meeting in* promiscuous assemblies, *from carrying arms without cause*, and so forth.

XXVI.

CÁTYÁYANA:—He who *usually* eats off the same vessel, or in the same line with another, shall be amerced if he refuse to do so without showing a *reasonable ground of* exception.

He who refuses to do so, shall be amerced. The *Retnácara*.

It is customary, with some *tribes*, for many persons to join and eat off the same vessel. The rule is general: he who *usually* eats another's food, may not, though perverseness, without stating a reasonable ground of exception, or other sufficient cause, reject food given by that person. It may be *also* determined, that even if *the practice originated in such motives as are mentioned* in the *Mahábhárata*, "through friendship food may be eaten *from each other's hands*, or it may be *so* eaten through extreme distress;" even when a motive *for refusal* should be shown, *namely*, a breach of that friendship which was the previous motive for eating food from each other's *hands*.

XXVII.

VRIHASPATI :—Those traders who conspire to abscond and defraud the king of his due, shall be compelled to pay eight times the amount.

Literally, the king's share, *meaning* the king's due. The *Chintámeni*.

Thus, if merchants going for the purposes of trade, and buying and selling goods, abscond in the night, after promising to pay the king's taxes, he may take from them eight times the amount of his taxes; or in the same instance the chief of the company *may levy that penalty*. These two laws concerning societies (v, XXIV, &c. v. XXVII) are mentioned incidentally.

XXVIII.

NÁREDA :—Let the king restrain them from acts which are injurious to him, which in their nature are vile, or which obstruct his affairs:

2. And let a king who desires prosperity, repress sinful proceedings, which are unauthorized by moral law, if they be actually attempted.

Literally, disapproved by nature; "acts which in their nature are vile." "Sinful proceedings, as the practice of gaming and the like; acts not productive of good. "Unauthorized by moral law;" not familiar under moral institutions. "Restrain them;" the irreligious men and the rest (III). The *Retnácara*.

Since whatever general agreement has been made by irreligious men and the rest, must be observed; and if they break it, they must be punished by the king; *it might*, therefore, *be inferred, that* every agreement, *even though illegal*, must be maintained: for instance, "we will all prevent the subjects from paying taxes to the king;" or, "let us always go naked;" or the following; "we will game; we will solace ourselves with harlots; we will run on the king's highway; let us worship an ant-hill under a *sácót'aca* tree."* It may be affirmed, that this text is intended to prevent such an inference.

XXIX.

YÁJNYAWALCYA :—When their business is finished, let the king dismiss those who have attended for the affairs of a community, after honouring them with *tokens of* regard, with gifts, and with expressions of civility.

2. Whatever a man who is sent on the affairs of a community shall receive, let him deliver *to his principles;* if he do not voluntarily deliver it, he shall be compelled to pay eleven times the amount.

Let the king, having finished their business, dismiss persons who have attended him on the affairs of a community, after honouring them with

* The rough-leaved trophis of Botanists, called in the vernacular dialects *S'áhór'a* or *Syaura*. The author alludes to a proverbial expression of contempt; "thou art like an ant-hill under a *Sáhór'a* tree." The plant itself also furnishes a contemptuous simile.

tokens of regard, with gifts, and with expressions of civility: such is the meaning according to the *Mitácshará*.

"Tokens of regard;" allowing them seats and the like. "Gifts;" honorary presents of clothes and the like. "Expressions of civility;" compliments. The meaning is, that attention should be shown by the king to the affairs of a community.

The second verse is thus expounded by VIJNÁNÉSWARA; a person deputed by merchants* to attend the king on the affairs of the community, should, even unasked, deliver to those merchants whatever clothes, money, or other things may be received: otherwise he shall be compelled to pay a fine equal to eleven times the amount of what was received. Consequently, whatever is given by the king, in an honorary form, to one deputed on the affairs of a community, should be received by all the members of it.

XXX.

VRÍHASPATI:—Whatever he may there obtain, is the property of all *the associates*, and should be divided according to their several proportions, whether it have been received six months or one month.

"There;" at the king's palace. In declaring it the property of all, without a restriction, that only that which is given to all belongs to all, the meaning is this; whatever is received by some of the associates, while attending at the king's palace, is the property of all. It is observed in the *Retnácara*, that "six months or one month" are mentioned in an indefinite sense: consequently it is meant that, after many days, they may collect and divide effects received: and that is optional.

XXXI.

VRÍHASPATI:—Or it should be given to the poor, the aged, or the blind, to women or infants, to afflicted, diseased, or childless persons, or other *needy* people: this is the primeval rule.

2. What is acquired and kept by those *members of a community*, or borrowed for the use of the society, or obtained as a present from the king, is common to all *the associates*.

"Diseased;" other than one afflicted *with pain* (*átura*). CHANDÉSWARA. But HELAYÚDHA reads *acara* instead of *átura*, and explains it handless, *or maimed*.

"Childless persons or other *needy* people;" under this are comprehended others (besides those enumerated), who should be maintained by the tribe, or by the company of artisans or the like, and whom the Sage contemplated. CHANDÉSWARA.

"Poor;" indigent. Thus a gift to those whom it is necessary to maintain, is approved; and that should be in proportion to the respective shares of all the givers.

* *Mehájen*, usually employed in its literal sense of a great or respected person; but here seems to signify a merchant, as in the common dialect.

XXXII.

CÁTYÁYANA :—Whatever is borrowed on pretext of a community, and is consumed or dissipated for their own purposes, must be made good by those *who borrowed it.*

"What is borrowed on pretext of a community;" under pretence of the society; by fraud in the name of the community; must be made good by the borrowers. The *Chintámeni* and *Retnácara.*

"Dissipated," *or aliened;* given away. This is merely an instance shown; the contracting of a debt is meant by the text. It is directed by VRÌHASPATI (XXXI 2), that a debt contracted on account of the community, shall in general be discharged by all *the members of it;* this text (XXXII) declares, that in some particular instances it shall not be *so* discharged.

XXXIII.

CÁTYÁYANA :—All those who are admitted into a society of *traders*, or company of artisans, *or other community*, share equally the previous stock and the debts.

Even those who are subsequently admitted, by general consent, into a society or other community of traders or the like, become sharers of the actual stock and debts, or of the capital invested in commerce and so forth. The *Chintámeni* and *Retnácara.*

It should be understood, that, if an agreement be made by general consent, at the time of admission, in this form, "I have no share in the gain, loss, or other *occurrence* prior *to admission;*" in that case he does not partake of the gain, loss, or the like. This is consistent with reason.

XXXIV.

CÁTYÁYANA :—Thus also he who remains in the society is a sharer in *all* matters relating to provisions, partible stock, gifts and duty; but he who forsakes it, is entitled to no share.

The term, *all* matters, *or acts*, is referred to the other terms severally: "Provisions," or eatables; sweetmeats and the like. "Partible stock;" grain and the like. "But he who forsakes it, is entitled to no share;" he who forsakes the society, or withdraws himself from the community, on motives of his own, is not entitled to any share. The *Retnácara* and *Chintámeni.*

The meaning is this: of what is consumed by the society, shares are received by those only who remain in the community; and that which is distributed shall be shared by them only; not by those who are out of the society at the time of partition, on the grounds of their having been members of it when the effects were acquired. Moreover, if any thing be given, or any other legal act be done by any one member of the community, all the members of it are partakers of the act: and in the case of a gift made by one, it is a valid gift on the part of the whole community, provided the donation were made by him while he was a member of it.

These engagements of members of communities have been propounded; the mutual agreements of two persons should also be discussed. For

instance, "if thou givest *that*, then I will give *this*; if thou dost *that*, I will do *this*; if thou dost *that*, I will give *this*; if thou givest *that*, I will do *this*:" such, and of many other sorts, are mutual promises. In these instances, "if," or "when," denoting a contingency, and a contingency implying two parts, both payment and non-payment are signified. Thus, (from the general construction of words mentioned in successive order,) by expressing, "in case of thy gift *being delivered*, my gift *shall be delivered*," it is in effect declared, "my gift shall be withheld, in case thy gift be withheld:" therefore, the withholding of the gift is stated as one part of the contingency; and hence no other penalty is directed. But where the promise is a general declaration, ascertaining work to be done, and wages to be paid, in this form, "thou shalt perform the work, and I will pay the wages;" in that case, since non-performance of work and non-payment of wages are not expressed, another penalty is proper, *in the event of a breach of promise on either part.*

"If thou shouldst do *that*, I would do *this*;" such a declaration is no promise: for the conditional future tense expresses something dependent on an event, and implies *possible* non-performance.

CHAP. III.

ON

RESCISSION OF PURCHASE AND SALE.

SECT. I.—*On Rescission of Purchase.*

After breach of engagement among societies, Rescission of Purchase and of sale is propounded by MENU, to determine any breach of engagement between a buyer and seller: both these titles are discussed in this place.

I.

VRĬHASPATI:—This rule of decision in regard to promises has been concisely delivered: here the contest usually arising on purchase and sale.

2.* Two kinds of property are universally acknowledged, immoveable and moveable; when a contract of sale is made, both are called by the name of vendible property.*

* Literally, at the time of the contract; that is, during the making of the sale. Both moveable and immoveable effects are called by the name of vendible property (*pánya*) or commodity.

II.

NÁREDA:—Property, in this world, is of two kinds, immoveable and moveable; and, in the laws of purchase and sale, both are called vendible property.

Thus cows and the like, though bought for a price, are described in the chapter on Inheritance, and in other places, by the name of hereditable property; but in contests respecting purchase and sale, by the name of vendible property: and, whenever the term of vendible commodity shall be used in this chapter, by that term must be understood the thing concerning the purchase of which a contest subsists. This is implied.

Therefore, in saying "let a buyer himself examine the commodity," it is not understood of an ox or the like hired to transport the goods purchased, though the cattle were in fact *once* bought.

III.

NÁREDA:—The rule of delivery and receipt is held by the wise to be six-fold; by tale, weight, measure, work, beauty, and splendor.

"By tale;" as fauselnuts and the like. The *Retnácara.*

And this is grounded on the usage of buying and selling fauselnuts and other commodities by the tale. Under the term "and the like," are comprehended shells, *fagots of* small wood, and similar articles.

"By weight;" as gold and the like. "By measure;" as grain and other things. The *Retnácara.*

This also is grounded on the usage of buying and selling grain and the like by measure, such as the *páyya* and the rest: in some instances grain is also *sold* by the weight. Other lawyers remark, that cloth and similar commodities are measured by the cubit or the like.

"By work;" oxen and other cattle are sold by the work which they perform, in carrying burdens, and so forth. The *Retnácara.*

An ox, which carries the weight of two thousand *suvernas*, is valued at so much; one able to carry a burden equal to four thousand *suvernas*, is valued at so much: such as the general usage. Other lawyers *explain*, "*by work*," *by the load; as much* cleft wood *as is* portable by one person, and so forth.

"By beauty;" handsome women and the like sold according to their personal charms. The *Retnácara.*

A handsome female *sold* by beauty, according to the difference of complexion. Other lawyers explain it, stones and the like *sold by their beauty.*

"By splendour;" pearls, *gems,* and the like, sold by their lustre. The *Retnácara.*

IV.

NÁREDA:—He who is dissatisfied with his purchase, after buying a commodity for a *just* price, is called rescinder of purchase, *which is* a title of judicial procedure.

That man who is dissatisfied is named the rescinder of purchase, a title of law; meaning him who rescinds a purchase. But other lawyers hold, that the title of law is *something* appertaining to that man: his dissatisfaction is, in law, termed rescission of purchase; for his discontent is the cause of litigation.

The same legislator declares what should be done in case of rescission.

V.

NÁREDA:—If a man, having bought for a just price any *cloth or other consumable* commodity *except seed grain,* should suspect that he had made a bad purchase, he may return it on that very day to the seller, unless it be diminished.

2. The buyer, who returns it on the second day, shall give *the seller* a thirtieth part of the price; on the third day, twice as much, *or a fifteenth*: and, after that, it is absolutely his own.

"A thirtieth part of the price;" the thirtieth part above the price: and this relates to cloth and other commodities liable to destruction by use, except seed grain. The *Retnácara.*

Others say, that, if the buyer return it on the second day, the seller shall receive the thirtieth part of the price.

"Twice as much:" twice a thirtieth; that is, a fifteenth, according to the opinion of other lawyers. After that *period*, the purchase must not be rescinded.

In the *Mitácsharà, reason for the exception* is mentioned; "because a distinct period will be directed for returning seed-*grain* and the like." In the *Retnácara* it is said, "this relates to cloth and other commodities liable to destruction by use, except grain." In the *Chintámeni it is observed;* "this *rule* is applicable to those things for the examination of which three days are allowed." The following text declares the time allowed for the examination of grain and other commodities:

VI.

YÁJNYAWALCYA:—The time allowed for the trial and examination of seed-*grain* is ten days; of iron, one day; of *bulls and other* beasts of burden, five days; of *pearls* and gems, seven days; of female slaves, one month; of milch cattle, three days; of male slaves, half a month.

"Seed;" grain to be sown and the like. "Beasts of burden;" bulls and other cattle. "Gems;" pearls and precious stones. "Women;" female slaves. "Milch cattle;" female buffaloes and the like. "Men;" male slaves. For the examination of these (namely of seed and the rest) the time allowed is, in their order, ten days, *one day*, and so forth. The sense expressed is, that, if rescission be proposed, on the discovery of a defect when the seed or other grain is examined, the purchase may be cancelled within ten days; but not later.

VII.

MENU:—A man who has bought or sold any thing in this world, *that has a fixed price, and is not perishable, as land or metals,* and wishes to rescind the contract, may give or take back such a thing within ten days.*

But this text of MENU relates to all things bought without examination, since there are texts repugnant to a recission of the contract on the tenth day, and so forth. The *Retnácara*.

The text of MENU concerns things not *very* liable to destruction by use, as a house, a field, a car, a chair, a bed and the like, excepting iron and other things, *for the trial of which a different period is allowed.*

VIII.

CÁTYÁYANA:—If a man, having bought vendible things, as milch cattle and the like, which have no blemish, repent of his bargain, and give them up within the limited time, *and before they are delivered to him*, he must pay a tenth part of the price to the owner.

2. But if a buyer have received the commodity sold, and repent of his purchase, BHRIGU has ordained that he shall pay a sixth part of the price when he returns it.

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* See the commentary on this text quoted again at v. XXIII.

"If he have received the commodity;" if he have taken possession of it. The *Retnácara*.

The inconsistent penalties of a sixth and a tenth part are reconciled, by MISRA and CHANDÉSWARA, from the circumstance of the buyer's having, or not having, received the commodity. Thus, if the thing which he bought remained with the vender, he forfeits a tenth part of the price; if he carried it home, he forfeits a sixth of the price.

Should it be said, this is inconsistent with a forfeiture of a thirtieth part; the answer is, there is no inconsistency: for the penalty of a thirtieth part is established in the case of things other than milch cattle and the like; and the forfeiture of a tenth part *is established* in the case of milch cattle and the rest.

CHANDÉSWARA remarks, that both these texts of CÁTYÁYANA relate to things bought without examination.

IX.

YÁJNYAWALCYA:—A return of commodities, once bought, shall not be made by a merchant who well knows the profit and loss on vendible things: if he obstinately persist in returning them, he shall pay a sixth part as a fine *to the king*.

A return of commodities, bought after examination, shall not be made by a purchaser, who perceives not any advantage, after making the purchase, *from rescinding his contract* as one made for a less quantity than what the price bore at the time of the purchase; nor shall the contract be rescinded by a vender, who perceives no loss on the commodity, in consequence of the rate exceeding the market price. But the buyer and seller may rescind the contract, if they perceive such gain or loss. The text is delivered for the sake of this exception. The *Mitácshará*.

In the *Retnácara* a similar exposition is given. Thus, after the purchase of a commodity examined, if the purchaser think it bought for too high a price, he may return it, after ascertaining the excessive price; but not without ascertaining it. *Consequently*, the purchase even of a commodity examined may be rescinded.

In the *Calpateru* the text is read, *abhijánatá*, well acquainted with the profit and loss on vendible things, instead of *avijánatá*, not perceiving profit or loss on vendible things; and the same reading occurs in some places of the *Chintámeni*. According to that *reading*, if a thing be knowingly bought at a high price from the exigency of affairs, the contract cannot be afterwards rescinded. But the *Retnácara* rejects that reading, because it disagrees with *copies of* YÁJNYAWALCYA, and with the *Pracása*, HELÁYUDHA, and the *Párijáta*.* In fact there can be no return of a commodity voluntarily purchased at a high price, in a cheap season, by one who actually knew the price to be great.

Rescission of contract and a penalty have been propounded in the case of a commodity bought without trial. In the case of commodities bought after examination, rescission has also been allowed in consequence of discovering the price to be excessive, and so forth. What is to be done in regard to

* I have nevertheless retained the version of the text, as it is read by LACSHMÍD'HERA author of the *Calpateru*. T.

the purchase of a thing examined, if no *increase or* diminution of price be discovered, is now stated.

X.

NÁREDA:—A trader, skilled in the value of vendible articles, shall not return those which he has bought: it is his duty to know what may be the loss on each article, and what the gain.

2. A buyer ought at first himself to inspect the commodity, and ascertain what is good and bad in it; and what, after such inspection, he has agreed to buy, he shall not return to the seller, *unless it had a concealed blemish.*

If he bought a thing for a great price, at a season when the *general* rates were moderate; or a damaged article, for the price of undamaged goods; may he not justify the rescission of the contract? Therefore the Sage says; "it is his duty to know what may be the loss on each article, and what the gain." Consequently, the price should be verified, and the commodity examined, before the purchase be completed.

"And what, after such inspection, he has agreed to buy;" what he has agreed to purchase, after trial and examination of its qualities and defects, deeming it such as he desired, and free from blemish, and so forth. Or the sense may be; what he has agreed to buy, having approved it after discussing the price.

XI.

VRĬHASPATI:—Let a buyer himself examine the commodity, and show it to others; when, after inspection and approbation, he has accepted it, he shall not return it.

"And show it to others;" to confirm the examination. But if he wish to return a thing so examined, and do not show an excess in the price, which was unknown to him at the time of purchase, he shall pay a fine equal to a sixth part, as directed by YÁJNYAWALCYA. Such is the ultimate sense of the text.

XII.

VYÁSA:—Grass, wood, bricks, thread, *common* grain, *not to be sown*, wine, *or other* liquids, cloth, base or precious metals, ought to be inspected immediately.

"Grain," except seed; for YÁJNYAWALCYA has declared, that the time allowed for examining seed-grain is ten days.

XIII.

NÁREDA:—Milch cattle should be examined within three days; beasts of burden, within five; but the examination of pearls, gems, and coral, must be within seven days;

2. Of male slaves, within half a month; of females, within one month; of *rice and* all *other* seeds, within ten days; of iron, and wearing apparel, within one day.

Since one day is allowed by NÁREDA for the inspection of wearing apparel, the word "immediately," in the text of VYÁSA, should be taken in the same sense. CHANDÉSWARA.

It should not be said, that the term "one day" may signify immediately (*sadyah*); because one is necessarily denoted by this term, and *sadyah* is explained by AMERA, at the instant. The word *sadyah*, ("immediately," sometimes signifies on that day; but the term 'one day' does not always signify immediately. However *sadyah* is formed by the suffix *dyah*, which conveys the sense of day.

If it be said, that, *in this text*, the direction for milch cattle to be examined within three days is superfluous, because it has the same meaning with the former text of NÁREDA, directing the buyer to pay a fifteenth part on the third day; or after that, the commodity is absolutely his own (V 2); some lawyers answer, "the former text lays down a special rule respecting things returnable in three days; but this text (XIII) allows three days for the examination of milch cattle;" and MISRA has remarked on the former text (V 2), that the rule is applicable to those things for the examination of which three days are allowed.

Others, relying on the opinion of CHANDÉSWARA, hold, that the former text concerns cloth and other commodities liable to destruction by use, and regulates the particular consequences according to the particular day *on which the commodity is returned*; but this text regulates the other *general* effect of any how returning the thing within three days.

After declaring the time allowed for trial and examination, in the same order as delivered by NÁREDA, the following text is cited in the *Retnácara*.

XIV.

VRÍHASPATI:—Within those times, if a blemish be any where discovered in the commodity purchased, it must be returned to the seller, and the purchaser shall take back the price.

In this text there is a various reading, *sanjnyáyaté*, instead of *sanjáyaté*, be known or discovered: in both readings the sense is the same; for it is consistent with the reason of the law, and with the text of CÁTYÁYANA.

XV.

CÁTYÁYANA:—But, an unexamined commodity being bought, and afterwards proved to have a blemish, it must be returned to its owner within the limited time, and not otherwise.

"The limited time;" the period allowed for trial and examination of it. "Not otherwise;" not after the time allowed for inspection.

The *Retnácara*.

Consequently, the purchase may be cancelled if a blemish be discovered within the time limited for examination; but not if a thing bought, and placed in the buyer's house, be accidently damaged within the time allowed for detecting blemishes.

Is not this repugnant to the text of MENU (Book II, Ch. II, v. LXI); for, by saying it shall never be sold, the sale is declared illegal; and that shows a thing to be returnable even after the time allowed for inspection? If it were sold with a concealed blemish, then it may be returned even after a very long time. So the *Chintámeni*.

Consequently, if it were sold with a blemish known to both parties,* it may be returned within the time limited for inspection; if it were fraudulently sold with a concealed blemish, it may be returned at any time.

One commodity mixed with another of inferior value, as saffron adulterated with safflower, *shall never be sold as unmixed;* nor a bad commodity, or one which has some blemish different from what is disclosed; nor less *than agreed on;* nor a thing kept at a distance, that its qualities and defects may not be known; nor a thing concealed, or covered with a cloth.

The *Retnácara.*†

But the author of the *Chintámeni*, after stating all this, adds, when any one of these *objections to the purchase* is discovered, the thing may be returned even after a very long time.

XVI.

NÁREDA :—But a mantle, that has been worn, and is tattered and soiled, yet is bought with those known blemishes, cannot be returned to the seller.

The text should be supplied; "yet is bought with those *known* blemishes." From parity of reasoning, it may extend also to other goods bought with such blemishes. The *Retnácara.*

SECT. II.—*On Rescission of Sale.*

XVII.

NÁREDA :—When a vendible thing, sold for a *just* price, is not delivered to the purchaser, this is called Non-delivery of a thing sold, a title of judicial procedure.

That thing, which is not delivered, is called by this technical title. Or the relative is an epithet of the thing sold; the non-delivery of that *vendible* thing which is sold, but not delivered, is called a title of law. Or the terms may be uncompounded; *sale and non-delivery.* The same is intended by MENU in the term "rescission of sale."

The following text declares the rule in this case:—

XVIII.

NÁREDA :—He then who, having sold vendible property for a just price, delivers it not to the buyer, shall be compelled, if it be immoveable, to pay for any subsequent damage, *as the loss of a crop and the like;* and if moveable, for the use and profits of it.

"Subsequent damage;" as loss by trespasses *of cattle* on the crop, and the like. "The use;" *literally,* the work, as the carriage of burdens and so forth. "Profits;" as milk and the like. The *Retnácara.*

The *Chintámeni* gives a similar exposition. It must be observed, that the produce of land or the like ought also to be given. Some hold, that

* So the MS. I suspect an error; the author's meaning must surely be, sold with a blemish unknown to both parties. T.

† In a gloss on the text of MENU, above cited. (Book II, Chap. II, v. 61.)

cshaya, signifying inhabited ground, implies the rent of a habitation, conformably with the sense of the root *cshi*, which signifies to inhabit, as well as to go. But others say, that *cshaya* denotes the loss of an expected crop, or the loss of house-rent and so forth; and that this is meant in the gloss of the *Chintámeni*, by the term "loss of a crop and the like."

XIX

NÁREDA:—Should the value be diminished *in the interval*, he shall deliver it together with the difference of the value: such is the rule for merchants in the same place; but, among those who trade to foreign countries, the foreign profit must be made good *to the purchaser*.

If gems, or the like, sold but not delivered by the vender, sink in value; if their price be gradually diminished; they shall be delivered to the purchaser with the difference of the value. *But*, among those who trade to foreign countries, (among those who are accustomed to travel to other countries *for the purposes of commerce*,) the vender shall make good the profit which might have been obtained by going to a foreign country.

VÁCHESPATI and MISRA.

The same exposition is delivered in the *Retnácara*. But others hold, that the rule concerning immoveable and moveable effects is stated generally in the first text (XVIII); and a particular rule is delivered in the second verse (XIX); for it is expressed conditionally. Thus, should the value of a thing, whether moveable or immoveable, be diminished, the difference of the value must be made good, as well as the damage and so forth; as directed in the first text: and if any one of those things were fit for foreign trade, the foreign profit must be made good, as mentioned by MISRA; not the charge of transport and the like in the same country. It should not be objected, that almost all cattle and merchandise are fit for foreign trade. It is implied, that the purchaser bought the thing for that purpose, *or that* the cattle or goods were actually employed in foreign trade.

XX.

NÁREDA:—This rule has been declared for vendible commodities, of which the price has been paid *or tendered*; but where it has not been paid *or tendered*, there is no injury to the buyer by *delaying the delivery*, unless there have been a special agreement *as to the times of delivery and payment*.

If the seller had received the whole price, he must pay for the damage and so forth; but there is no offence in his keeping the commodity to obtain payment. MISRA.

Consequently, it is an offence to detain it knavishly, without a sufficient cause.

XXI.

YÁJNYAWALCYA:—He who, having received the price of a thing sold, delivers not that thing to the buyer, shall be compelled to deliver it, together with interest; or, among those who trade to foreign countries, with the foreign profit.

"Interest" must be understood to be an increase on account of the difference of price. But, in a gloss on the text of NÁREDA, an opinion is advanced in the *Mitácshará*, that the profit which would have arisen from the sale of the commodity must be made good, or twice or thrice the rent of a house or the like, or the rate *of interest* directed under the title of Loans; at the option of the buyer.

XXII.

VISHNU:—He who, having received the price of a thing sold, delivers not that thing to the buyer, shall be *made to pay him the value of it, with damages, and* be fined a hundred *panas* of copper *to the king*.*

This text also has the same import with that of NÁREDA; but further directs an amercement.

XXIII.

MENU:—A man who has bought or sold any thing in this world, *that has a fixed price, and is not perishable, as land or metals,* and wishes to rescind the contract, may be give or take back such a thing within ten days;†

2. But, after ten days, he shall neither give nor take it back: the giver, or the taker, *except by consent,* shall be fined by the king six hundred *panas*.

He who wishes to rescind the contract, (who wishes it annulled, who repents of it,) may give back *the price, or the commodity,* to the other; *that is,* may return it. The buyer may give it back to the seller; or the seller may take it back from the buyer. This regards grain to be sown, and things which are not perishable, as a house, land, a car and the like, excepting iron, beasts of burden and the rest. The *Retnácara.*

For the time allowed for the trial and examination of iron and the rest, is limited by particular texts (VI, &c.); and in some instances it is limited to three days. A period of ten days is allowed for rescinding the purchase of a house or of land; from *the* parity *of the case,* the same should be allowed for the rescission of sale: and it is equitable that the period should be limited to three days for the rescission of sale in the case of iron or the like, as directed *for the rescission of purchase* (VI).

He who has bought or sold any article in this world, that has a fixed price, and is not perishable, as land, or copper, or the like, and repents of the contract, thinking it ill made, may return the goods within ten days, or may take back the thing sold. CULLÚCABHATTA.

This text may relate to things purchased without examination; for it seems to be so established in the section on Rescission of Purchase: it may also be understood of a sale made by mistake.

But other lawyers maintain, that this text, and what is suggested by the text of YÁJNYAWALCYA (VII), may also relate to a thing bought after

* I insert the whole text, as it is cited in other works; a part of it seems to have been here omitted by mistake. T.

† The first verse has been already cited (VII.)

examination. It is the buyer's own fault if he examine not the commodity. But *the rule that under certain circumstances* a thing cannot be returned to the seller, takes effect after ten days and so forth. Yet, even in that case, it should have been inspected and approved (XI), to obviate *the risk of* concealed blemishes. However, under the rule regarding commodities inspected and approved (XI), if an agreement be formally made to this effect, "this is approved by me; even though blemished, it shall not be returned;" such a commodity can on no account be returned. This is intended; and the text of MENU (XXIII) supposes such an agreement.

"Six hundred" (XXIII 2); six hundred *panas*.

CULLÚCABHATTA and CHANDÉSWARA.

"The giver or the taker;" the buyer giving it back, or the seller taking it back. According to the *Retnácara* and the rest, this text should properly be restricted to things bought without examination.

XXIV.

MENU :—By this law, in all business whatever here below, must the judge confine within the path of rectitude a person inclined to rescind his contract of sale and purchase.

"All business whatever:" by this expression, the law concerning rescission of purchase and sale is extended to other worldly affairs. Consequently, there is no offence in rescinding, within ten days, a contract for a loan, for an association, or for service, or a promise of wages, or the like. But, after that period, those promises may not be broken; *or if they be retracted*, a fine of six hundred *panas* must be paid to the king. This is consistent with the opinions of CHANDÉSWARA and CULLÚCABHATTA; but a fine may be inferred without a particular rule.

"By this law" (XXIV); by the law declared under the head of Rescission of Sale.

XXV.

CÁTYÁYANA :—He who accepts not a thing which he has bought and secured, and he who delivers not, free from blemish, *a thing which he has sold*, shall *each* take back his own property, forfeiting a tenth part of the price.

"Secured;" *literally*, received; brought into his power.

The *Retnácara* and *Chintámeni*.

"Each shall take back his own property;" the buyer shall take back the price; and the seller shall take back the commodity: for, under the authority of the text, the right of property has not been transferred in this case. But the Sage propounds a distinction in regard to a thing of which possession has not been taken.

XXVI.

CATYÁYANA :—Yet, if the thing were not secured, though a formal contract were made, and the purchaser accept it not, the same rule *for rescission within ten days* prevails; but, after ten days, the contract may not be rescinded.

"A formal contract;" an attested writing or the like. Although such a contract be made, if possession of the commodity have not been secured, the purchaser does not forfeit a tenth part *of the price*, on returning it within ten days; but, after that period, a thing, of which the blemish was known, cannot be returned. The *Chintámeni*.

The meaning is, that if a mere agreement for purchase were made, and the goods be not accepted, there is no penalty of a tenth part *of the price;* but, after the limited time, nothing can be returned, even though a mere agreement had been made. As for returning a blemished commodity, even after the limited time, that is restricted to the case of a concealed blemish; it is not permitted if the blemish were disclosed at the time of the sale.

XXVII.

NÁREDA:—Should the thing sold be injured, or burned, or carried away, *after the time when it ought to have been delivered*, the loss shall fall on the vender, who delivered it not when he ought.

"Who delivered it not when he ought;" who, without rescinding the contract, tendered it not, even though a demand were not *formally* made: *in this case the loss falls on the vender*, unless the commodity be injured by the act of GOD or of the king. But, after a demand, the loss falls on the vender, even though the injury happen by the act of GOD or of the king; and he must make it good to the purchaser.

XXVIII.

YÁJNYAWACLYA:—Should a commodity sold, but not delivered on demand *with tender of payment*, be injured by the act of GOD or of the king, the loss shall fall on the vender.

Again: if the vender, without rescinding the contract, deliver not the commodity, though demanded by the purchaser, and it be injured by the act of GOD or of the king, that loss falls on the vender; therefore another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer. The *Mitácshará*.

It appears from the mention of a demand, in the text of YÁJNYAWALCYA, that the vender shall not be compelled to make it good, if a thing undemanded be injured by the act of GOD or of the king. As a demand is not specified in the text of NÁREDA (XXVII), it should seem, that the vender must make good *the value of* the thing, though *it had not been* demanded, if it be injured by his own negligence, without the act of GOD or of the king; but the vender shall not be compelled to make it good, if destroyed by the effect of time, before it be demanded.

Yet, if a buyer, repenting of his purchase, accept not the thing, and it be afterwards destroyed by the act of GOD or of the king, the loss falls on him.

XXIX.

YÁJNYAWALCYA:—If the first vendee refuse to receive the thing sold, it may be sold to another; and if a loss arise by the fault of the vendee, on him alone shall it fall.

Should the first buyer, repenting of his purchase, refuse to receive the commodity, it may be sold to any other purchaser who may offer. The first hemistich is thus expounded in the *Mitácshará*.

Here no reference to the time limited for rescission of purchase is hinted by the Sage or Commentator: and according to the *Mitácshará*, the last hemistich establishes that the loss falls on the vendee, if no other purchaser offer for that thing, and it be destroyed by the act of GOD or of the king; for the loss happens through the fault of the purchaser in refusing to receive the commodity.

XXX.

NÁREDA:—He who, having shown *a specimen of* property free from blemish, delivers blemished property, shall be made to pay double the price *to the vendee*, and a fine to the same amount.

By directing that double the price shall be paid, if blemished property shall be sold, after showing unblemished goods to determine the price, the necessity of delivering the blemished property is denied. But the Sage has not declared that the unblemished thing which was shown shall be delivered.

XXXI.

VRĬHASPATI:—The dishonest man, who sells a commodity knowing its blemish, *but not disclosing it*, shall pay double the price of it *to the vendee*, and a fine of equal amount *to the king*.

"The price of it;" the word "it" bearing an apparent allusion to what has preceded, and "sells" signifying 'gives after receiving a price,' the allusion is to the price proposed; for NÁREDA has stated it in a single phrase: and the word price, in his text (XXX), signifies the stipulated *consideration*, and cannot be applied in a secondary sense to *the value of* the commodity *delivered*. Or it may be thus explained: since the text of NÁREDA directs payment of double the price, if blemished property be sold after showing unblemished goods; twice the value of the commodity must be paid, if blemished property be shown and delivered without disclosing the blemish; for in the text of VRĬHASPATI the word "it," being referred to the principal subject, alludes to the commodity which was originally proposed for sale.

"Who sells a commodity (XXXI);" who sells it without disclosing the blemish. The *Retnácara.*

XXXII.

YÁJNYAWALCYA:—If a man sell to one what had been *already* sold *by him* to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.

Again; he who sells to one a thing already sold to another, or vends a blemished commodity, of which he conceals the blemish, shall be fined in double the price of that commodity. This is implied by the interpretation first stated in the exposition of the first hemistich, as delivered in the *Mitácshará.*

XXXIII.

NÁREDA:—He who sells a commodity to one man, and delivers it to another *unauthorized to receive it*, shall also pay double the price, and a fine to the same amount.

After agreeing for the price of that thing with one man, if a man afterwards relinquish it to another, he also shall be compelled to pay double the value, and a fine to the same amount. The *Retnácara.*

In this case, the first contract shall prevail (Book II, Chap. II, v. 28). To whom shall twice the value be paid? To him who does not obtain the chattel purchased. This should be understood as the sense of the text, because no person is specified.

Here a difference occurs in the *Retnácara* and *Mitácsharà*, one stating the penalty at double the value of the thing, the other at double its price. It may be reconciled by supposing the price and the value of the thing to be the same.

XXXIV.

NÁREDA:—But if a vendee refuse to accept the commodity which he has bought, when it is offered, the vender commits no offence if he sell it to another.

XXXV.

YÁJNYAWALCYA, cited in the *Retnácara* and *Chintámeni*:—He shall be compelled to repay two-fold a sum received as earnest.

What is voluntarily delivered to the seller, by the purchaser, for the purpose of ratifying the bargain, is meant by the word "earnest;" and the vender must pay twice the amount if he afterwards cancel the sale. The *Retnácara.*

Here it is not directed that twice the value of the thing shall be recovered, but twice the amount deposited to complete the bargain. This is the full purport of the text.

XXXVI.

VYÁSA:—By him who has given earnest, and appointed no specific time for delivery, it shall be forfeited if he refuse to accept the commodity when offered.

The amount which the vendee has given as earnest on account of the purchase, is forfeited to the vender, if the buyer refuse to receive the commodity when tendered. Therefore that amount shall not be recovered by the purchaser from the vender. The *Retnácara.*

In this case, it appears that forfeiture of the amount paid as earnest is the only penalty *imposed* on the vendee. But the text of YÁJNYAWALCYA (XXXV) being thus expounded in the *Chintámeni*, "what is given by the vendee, and received by the vender promising to sell his own vendible property, is received as earnest, and twice its amount shall be paid to the purchaser by the vender repenting of the sale;" what is deposited to complete the bargain, is denoted by the word earnest.

This text (XXXV) is placed by YÁJNYAWALCYA himself under the title of Loans and Payment, and is expounded by VIJNYÁNÉSWARA as relating to pledges.*

* Book I, v. CXXIV.

XXXVII.

VRIHASPATI :—What has been sold, at a low price, by a man inebriated or insane, or through fear, or by one not his own master, or by an idiot, shall be given back, or may be taken *forcibly* from the buyer.

"Shall be given back *by the purchaser of it;*" the text should be thus supplied. "At a low price;" this is connected with all the terms of the sentence: thus the meaning is, "what has been sold, at a low price, by a man inebriated or the like." Consequently, *if it be* sold for a fair price by a man inebriated, *the sale* is valid; and *if it be* sold at a low price by a man sound of mind, *the sale* is *also* valid. Thus some explain the law: but that inference is wrong; for, even the sale of a thing which ought not to be sold might be valid, *though made* by a man intoxicated. Therefore the full sense is, that a sale made by mistake, for a low price, is void: and in this case, as sixteen void gifts are declared under the title of Subtraction of what has been given, so, from parity of reasoning, there may be sixteen void sales. Thus others expound the law.

XXXVIII.

NÁREDA :—The purchase and sale of all commodities by merchants are made with a view to gain; and that gain arises from the receipt of the price, be it great or small:

2. Therefore, *when a price has not been stipulated*, let some merchant, who knows the price of commodities, fix it according to place and time: let him not act crookedly; the straight path is the best in all mercantile business.

If a thing be sold without stipulating its price, let a merchant determine it according to time and place, and fix a proper value: let him not act crookedly, or fraudulently; let him not deviate from propriety in regard to the price. CHANDÉSWARA.

XXXIX.

YÁJNYAWALCYA :—He who falsifies scales, market rates, measures, or standard coins, and he who uses them, shall both be forced to pay the highest amercement.

"Scales," or balance; the scales and beam. "Market rates," (literally, commands;) the king's written precept *regulating market rates.* "Measures;" as a *prast'ha*, a *drôna*, and the like. "Coins;" money stamped; as a *bherma*, a *nishca*, or the like. Both he who falsifies these (who makes them different from the general standard of the country, whether less or more, or stamps money, such as a *bherma* and the like, in an unusual manner, or alloys it with copper or other *base metal,*) and he who uses them knowing them to be false, shall each be fined in the highest amercement. VIJNYÁNÉSWARA.

The sage propounds a law concerning the trial and examination of coins.

XL.

YÁJNYAWALCYA :—That examiner of coins who declares bad money good, or good money bad, shall be compelled to pay the highest amercement.

He again who, on examining coins, declares a coin to be good, which is *over* alloyed with copper or the like, or who declares a true coin to be false, shall be fined in the highest amercement. The *Mitácshará.*

A similiar fine might be imposed on those who declare true weights or measures to be false; but it is not directed in this case, because their offence is less than that of an examiner of coins, by reason of the grossness of weights and measures compared with coins.

XLI.

YÁJNYAWALCYA:—But he who cheats in weights or measures to the amount of an eighth part, shall be forced to pay a fine of two hundred *pańas;* and proportionably if *the fraud be* greater or less.

He again who demands *another* by false weight or measure, to the amount of an eighth part of the vendible property, whether it be grain in the husk, cotton, or the like, shall be fined in two hundred *pańas*; and if the amount of the fraud be more or less, the fine also shall be proportionably more or less. The *Mitácshará.*

In this case, if the fraud be less than an eighth part, the amercement shall be less; if the fraud be greater, the amercement shall be higher. Thus some expound the law.

XLII.

YÁJNYAWALCYA:—A man who adulterates vendible property, such as drugs, oil, salt, perfumes, grain, sugar, or the like, shall be compelled to pay sixteen *pańas.*

"Drugs;" medicinal substances. "Oil;" *comprehending* clarified butter and the like. "Perfumes;" as *uśíra*, or the root of *virana* grass,* and the like. The expression, "or the like," comprehends asafœtida, pepper, and other things. The fine for mingling inferior substances with these, for the purpose of sale, is sixteen *panas.*

XLIII.

YÁJNYAWALCYA:—The fine for disguising the nature of earth, leather, beads, thread, iron, wood, bark, and cloth, is eight times the amount of the sale.

Giving to earth and the rest, for the purpose of sale, the *appearance of a thing of a* precious nature, which it *really* is not; or making it to resemble a thing of a valuable nature, by the addition of a different odour, colour, or juice. For instance, counterfeiting fragrant *ámalacá*† by adding the odour of the flower *mellicá*‡ to a piece of earth; or the skin of a tiger, by colouring the skin of a cat; or a ruby, by tinging a glass bead with another hue; or silken thread, by giving a glossy appearance to cotton thread; or silver, by polishing black iron; or sanders wood, by adding the odour of that to the wood of the *bilwa*;§ or passing the bark of the *caccóla* for cloves; or counterfeiting wove silk, by raising a glossy appearance on cotton cloth: *in such cases*, the fine is eight times the value of the commodity, whether earth, leather, or the like, made to resemble *another thing*, and sold *in its stead.* The *Mitácshará.*

* Aromatic Andropogon.
† Phyllanthus emblica.
‡ Nyctanthes undulata.
§ Cratœva marmelos.

Others hold, that the fine is eight times the value of the fragrant *amalaca*, which it was called when sold, and which was expected by the purchaser.

XLIV.

YÁJNYAWALCYA:—The fine also for one who delivers, in pledge or sale, a thing changed under seal, or a fictitious valuable, is thus regulated:

2\. For a thing worth less than a *pan'a*, *the fine is* fifty *pan'as*, for one *pan'a*, a hundred; for two *pan'as*, two hundred; for a greater value, a higher amercement.

"Under seal;" what has the cover of a seal *or the like, as* a casket. "A thing changed;" of him who fraudulently substitutes, by slight of hand, a casket full of beads, for another casket which he showed full of pearls, and of him who delivers, in sale or pawn, a fictitious valuable, as *counterfeited* musk or the like, "the fine is thus regulated:" *or it* will be *now* delivered; *or it* should be *thus* understood. If the price of the fictitious musk, or the like, be less than one *pan'a*, the penalty for selling that fictitious article is fifty *pan'as*; if the price be one *pan'a*, a hundred *pan'as*; if the price be two *pan'as*, two hundred *pan'as*: in like manner, if the price be greater, a higher fine should be inferred. VIJNYÁNÉSWARA.

Others deem it proper todeterminethe fine, in a case of *fraudulent* sale, according to the number of *pan'as* in the price received; and, in the case of a *fraudulent* pledge, according to the number of *pañas* in the value of the commodity under the name of which the thing was delivered. Hence, although the fine be very heavy, it must be borne, because it is directed by the text.

XLV.

YÁJNYAWALCYA:—The highest amercement is *directed* for *traders* combining to maintain the price against labourers and artisans, *although* acquainted with the rise or fall of the price.

If traders, knowing an increase or decrease in the market rates as regulated by the king, conspire, through avarice, to maintain the *former* price against labourers, as washermen or the like; and against artisans, as painters and the rest; they shall be fined one thousand *pan'as*

The *Mitácshara*.

Others hold, that if labourers, artisans, and traders, knowing the rise or fall of the market rates, maintain the price, (that is, keep up the former rates,) they shall be fined.

XLVI.

YÁJNYAWALCYA:—The fine on traders who combine to obtain or to vend goods at wrong prices, is fixed at the highest amercement.

For those merchants again, who combine and stop foreign commodities, which they want at a wrong price, below the market rate, or who sell goods at prices exceeding the market rate, the fine ordained by MENU and others is the highest amercement. The *Mitácshara*.

The meaning which results therefrom is, that a fine is directed for the offence of raising or lessening the market rates fixed by the king. The Sage declares, that purchase and sale should be conducted according to the prices regulated by the sovereign.

XLVII.

YÁJNYAWALCYA :—Purchase or sale should be daily conducted according to the *market* prices, which are fixed by kings; the difference thereof is the legal profit of traders.

If the king be near, according to that price which is fixed or regulated by him, should daily purchase or sale be conducted. The difference, or remainder, of those prices regulated by the king, is the only profit of traders; for they may not alter the rates at their own choice. The *Mitácshará.*

"If the king be near;" but if he be not near, the market prices should be regulated by his officers, and should be reported to him; else they may be apprehension of wicked practices. On this account, the word king is used in the plural; it has here a secondary sense, as in the expression "the king moves," *meaning him and his retinue.*

Distinct prices should be fixed for purchase and sale, according to the abundance or paucity of purchasers.

XLVIII.

MENU :—Once in five nights, or at the close of every half month, or of every month, *according to the nature of the commodities,* let the king make a regulation for market prices, in the presence of those *experienced men.*

Once in five nights, or at the close of every fortnight, or of every month, according to the variableness, even tenor, or great uniformity of the price. In like manner, other occasions *for frequent or rare changes* may be also understood. The term "king" is here used generally; intending also the king's officers.

XLIX.

YÁJNYAWALCYA declares the mode of regulating market prices :—On commodities of the same country, a trader, who buys and sells again immediately, may receive five in the hundred; but on those of other countries, ten in the hundred.

He who sells a commodity, which he obtained in the same country, may take a profit of five in the hundred, (that is, five *pańas* in one hundred *pańas;*) and if the commodity were obtained in another country, he may take a profit of ten *pańas* on the value of one hundred *pańas, that is,* if an opportunity of sale occur on the same day on which the commodity was received. But to him again who sells the commodity at a subsequent time, a greater profit must be allowed, because a greater time elapses. The market prices of various commodities should be so regulated by the king, in his own dominions, that there may be a profit of five *pańas* in a hundred on the regulated prices. The *Mitácshará.*

In this instance, another or a foreign country should not be assumed, from the description *quoted in a former chapter;* "where language differs, or a mountain intervenes, &c.;"* for that is barred by the condition mentioned, "who buys and sells immediately." But a greater profit may be determined from a man's own judgment, at the distance of a *Yójana* or the

* Book II, Chap. III, v. XXVI.

like from the market where the purchase was made, according to the difference of charges. Such is the meaning *of the text.*

What price may be taken by him who buys from a man to sell again, is determined after regulating the market prices for the purchase of commodities bought *for consumption.*

L.

YÁJNYAWALCYA :—Adding the incidental charges to *the first cost of* the commodity, let a price be fixed which shall be equitable both to the buyer and the seller.

So much as is the amount of charges incident to the fabrication or purchase of the commodity; adding that, and the king's taxes, and the charges of subsistence, of boat hire and the like, let a price be fixed: and in that case, if the seller happen to pay all the *estimated* charges, the buyer could obtain no *subsequent* profit; or if the buyer kept all the *computed* profit, the seller ought not to be liable for any *previous* charges: therefore the price should not be so regulated; but equitably both for the buyer and seller, to obviate excessive loss. Such is the sense; and VIJNYÁNÉSWARA so expounds this text; but it is cited by him with a remark, that "the Sage declares the mode of regulating the price of a foreign commodity." Yet in fact it is only an example of the mode of regulating market prices; the regulation should be formed on a man's own judgment. Sometimes, from the price happening to rise, the profit is five hundred *paṅas* on a hundred; sometimes a man may even lose his capital: for the ruler *of events* governs the *fluctuations of* price. Consequently, the market rates should be fixed according to the prices of several countries, according to time, to *charges of safe* custody and the like.

LI.

NÁREDA :—The value of apparel once washed is diminished an eighth part; twice *washed*, a fourth; thrice *washed*, a third; and four times washed, a half:

2. Afterwards a deduction of a quarter from the half-reduced value is successively made, until the fringe be wasted, and the cloth tattered; *but* for tattered cloth there is no regulated deduction.

Here it should be observed that barter is in fact a sale; and the same rules should be admitted in the forms of judicial procedure *for barter* and for sale, else the rules concerning it are no where delivered. But there is some distinction in law: delivery, after receiving a consideration any-how settled by way of price, is sale; delivery, after receiving a consideration settled by way of equivalent, is barter. The equivalent should be of the same nature, and both things to be bartered should be equal in quantity; or, if one be double of the other, or the like, they should be equal in pecuniary value: or more or less *under other circumstances*, at the option of the parties. Thus, in an exchange of *tila* or similar grain, for peas or pulse, the equal value, not the similar nature, is required: namely, such value as would arise from the sale of the article; for instance, from exchanging *tila* or other grain, for shells, *paṅas* of copper, silver coins, or the like. More may be determined by the mere exertion of a man's own intellect. *The law has been* thus concisely *propounded.*

CHAP. IV.

ON THE

OWNERS OF CATTLE AND THEIR HERDSMEN.

SECT. I.—*On the Wages of Herdsmen, and on Losses of Cattle.*

HAVING propounded certain engagements suggested by the obligations of master and servant, MENU declares the law concerning disputes *arising from the fault* of a particular servant, *namely*, the herdsman.

I.

MENU:—I now will decide exactly, according to the principles of law, the contests usually arising from the fault of such as own herds of cattle, and of such as are hired to keep them.

"Cattle," which become the subject of dispute. The *Retnácara.*

Others explain the text; "I will decide exaatly the contests between owners of cattle and *their* herdsmen."

To determine suits concerning wages, the Sage declares the rule for them:

II.

MENU:—That hired servant, whose wages are paid with milk, may, with the assent of the owner, milk the best cow out of ten: such are the wages of hired herdsmen.

"Whose wages are paid in milk;" hired for a recompense so paid; one whose wages are milk alone. He shall milk whichever is the best among ten cows. This milking of one cow *in ten* constitutes the wages of a herdsman hired for *an allowance of* food, clothes, and the like. The *Retnácara.*

In the *Chintámeni* a similar exposition is given; and it is added, in the *Menwarthamuctávalì*, that the herdsman must keep ten cows, for the milk of one, which is allowed him; and he must also milk them. But others explain "hired" (in the latter part of the text) a servant: it follows, therefore, that an attendant on cattle also is a servant; and the text coincides with that of VRĬHASPATI (Chap. I).

III.

NÁREDA:—For a hundred head of cattle, the annual wages of the herdsman are a heifer three years old; for two hundred, a milch cow, and the milk of the whole herd every eighth day.

"For a hundred head of cattle," *kept by him;* and so for two hundred. *The term employed in the text signifies* a heifer three years old. "The milk of the whole herd;" the milking of all the milch cows.

The *Retnácara.*

IV.

VRĬHASPATI :—*A servant*, hired for *attendance on* the milch cattle of another, shall receive the whole milk every eighth day.

Here is an optional alternative; the milk of one cow out of ten, or the milk of all the cows every eighth day, *allowed* as wages. But NÁREDA has further mentioned a heifer three years old. Neither is this a third case; for it cannot alone suffice for wages. Nor should it be affirmed, that the milk of the whole herd every eighth day, the milk of one cow out of ten every day, and a heifer *year by year*, from the very same case; for there is no mutual reference between the *texts of these* sages. The milk of one best cow in ten, is equal to the milk of all the cows good and bad, at the end of every eighth day, or on every ninth day. In the case propounded by NÁREDA, since some of the hundred cows afford no milk, a heifer three years old is allowed as wages for attending such cattle. Thus others *explain the law.* From the special mention of one whose wages are paid with milk, another form is to be understood for the wages of one who is paid in money; and that is propounded in the chapter on the Non-payment of Wages and Hire.

NÁREDA declares what should be done by a herdsman:

V.

NÁREDA :—Let the owner each day commit his cattle to the charge of the herdsman, as soon as night ends; and in the evening, let the herdsman restore them *to their owner*, having seen them well satisfied with grass and with water.

"Commit his cattle" to be kept *by the herdsman.* "Restore them after having seen them well satisfied with grass and with water;" restore them after they have eaten grass and drunk water. "In the evening," let the herdsman restore them; let him deliver them to their owner, when little of the day remains.

The *Retnácara.*

The *Chintámeni* furnishes the same explanation. The meaning is, that the cows are intrusted to the herdsman for pasture and water only.

VI.

YÁJNYAWALCYA :—Let the herdsman restore the cattle each evening in the same condition in which he received them: for such as have been seized or killed through his negligence, he shall pay, if he had made an agreement for wages.

"Through his negligence:" *if* cattle *be* seized or killed, through his own fault, the herdsman shall be compelled to make good *the loss* to the owner, if he had made an agreement for wages; that is, if wages had been stipulated. So the *Mitácsharà:* and the very same *exposition is delivered* in the *Retnácara.*

By this condition ("if he had made an agreement for wages") it is intimated, that he who attends cattle without wages shall not be compelled to make good the loss; but to him who attends cattle as a favour, even the favour *conferred by him* is his hire: and he who, even without wages, makes a promise in this form, "I must inevitably restore the cattle," shall also be compelled to make good the loss. Such should be the decision.

VII.

MENU and NÁREDA:—But he shall not be compelled to make it good when robbers have carried it away notwithstanding his exertions, provided he give notice to his master in a *proper* place and season.

"In place and season" proper for such notice.

The *Retnácara* and *Chintámeni.*

In fact the sense is this; not neglecting the proper place and season, if he give immediate notice to his master. CULLÚCABHATTA *gives* the very same *exposition*.

VIII.

VYÁSA:—The herdsman is not chargeable, if he be made captive, if the village be overpowered, or if the district be thrown into confusion, and any of the cattle be seized or destroyed.

"If he be made captive;" if he be seized and detained, and so forth.

The *Retnácara.*

In fact, if the loss or injury happen through want of care on the part of the appointed herdsman, though he were able *to defend the cattle*, blame is imputable to him; but not, if he were unable *to defend the herd.*

IX.

MENU:—By day the blame falls on the herdsman, by night on the owner *if the cattle be fed and kept* in his own house; but if the place of their food and custody be different, the keeper incurs the blame.*

By day, if any fault occur in regard to the food and custody of cattle placed in the hands of the herdsman, the blame falls on him; by night, if that happen to cattle restored by the herdsman and standing in the owner's house, it is the owner's fault; but otherwise, (if they remain even at night in the herdsman's charge,) should any fault occur, the herdsman incurs censure. So CULLÚCABHATTA. In the *Retnácara* the same *exposition is given.*

Greater wages should be stipulated for the herdsman, when the agreement is for attendance by day and night. The expression "the blame falls on the owner," is intended to denote that the herdsman shall not be compelled to make good the loss; *that* the fine *must be paid by the owner*, if grain be damaged and the like; and *that he must perform* penance, if the cattle die, and so forth.

VRÍHASPATI declares the mode in which a herdsman should defend *cattle:*

* In Book I, an anonymous text is quoted which differs from this in the last hemistich; "but if another have the care of them at night also, the owner shares no blame."

X.

VRĬHASPATI:—Let the herdsman preserve the cattle from danger of insects and reptiles, of robbers and tigers, and from falling into caverns or pits; let him defend them to the utmost of his power; let him call aloud for help, or give notice to his master.

Let him guard them from caverns or dens, and from pits or cavities. Let him preserve them, to the utmost of his power, from danger of insects or reptiles and the like. "Let him call aloud for help;" that is, let him make others hear *his cries*. The *Retnácara*.

"Let him defend them;" let him rescue them. If the cattle be in imminent danger from a tiger or the like, let him call people to assist in protecting them; or if that be impossible, let him instantly give notice to his master, that he may endeavour to save them. Thus others interpret the text.

XI.

NÁREDA:—If a cow be in danger, let the herdsman defend her to the utmost of his power; but if he be unable to *protect her*, let him hasten and give notice to his master.

2. A herdsman, who preserves not a cow from accidents, who gives no alarm and informs not his master when she is in danger, shall pay the value of her *to her owner*, and a fine to the king.

"Danger;" distress. "Let him defend her;" or in the case of his inability, let him call aloud *for help*. "Shall pay the value of her" (XI 2); literally, bear *the loss*: he shall pay for that cow. The *Retnácara*.

Cow is mentioned generally, comprehending other sorts of cattle.

XII.

MENU and NÁREDA:—The herdsman himself shall make good the loss of a beast which through his want of due care has strayed, has been destroyed by reptiles, or killed by dogs, or has died by falling into a pit.

"Has strayed;" or has been seized, or "destroyed." By whom *destroyed?* The construction of the sentence answers that question; "by reptiles." "Taken by himself;" (*for* CHANDÉSWARA *reads* swahatam, *which is explained, taken by himself, instead of* śwahatam, *killed by dogs;* this also comprehends seized by another. "Has died by falling into a pit;" or has died on a mountain of difficult access, or the like. "Through his want of due care;" of the care which should be used by a herdsman. The *Retnácara*.

The cattle is lost through want of the care due from the herdsman; hence the blame imputable to that herdsman, is a cause for his making good the loss. The *Chintámeni*.

"Strayed;" passed out of sight. Has been "destroyed by reptiles, or killed or bitten by dogs, or has died by falling into a pit or the like." And these are *only* examples; if a cow or other beast die, or stray, through want of such manly exertion for its preservation as is due from the herdsman, he must make it good to the owner. The CULLÚCABHATTA.

According to him, the reading is *śwahatam* with a palatine Ś; but, according to the *Retnácara*, it is read with the dental S.

XIII.

YÁJNYAWALCYA:—On *the* loss *of a beast* by the fault of the herdsman, the fine ordained for him is thirteen *pańas* and a half; and *he shall pay* the value *of the beast* to its owner.

On the loss of a beast by the fault of the herdsman, he shall be forced to pay a fine of thirteen *pańas* and a half, and *make good* the property lost, to the owner; that is, the value of the beast as determined by arbitrators. The verse is *intended* to regulate the amount of the fine; the rest had been already propounded. The *Mitácshará.*

"The verse;" this text (XIII). "The rest," (the payment of the value to the owner,) already propounded (VI), is thus repeated. Such is the meaning *of the gloss.*

Here "the property lost" signifies its price. The *Retnácara.*

And thus, whenever it is declared in this chapter that property must be made good, its price is intended; for the property *itself* is *lost* or destroyed. VISHNU expressly mentions the price:

XIV.

VISHNU:—By day, if cattle be in danger from venom or fire, and the herdsman go not *to their assistance*, he shall pay to their owner the price of cattle *thus* destroyed by his fault; and if he milk them without permission, he shall be fined twenty-five *cárshápanas.*

"Go not;" if he do not go to protect them. "*Cárshápana*" will be explained. The *Retnácara.*

Meaning, that it will be explained in the chapter on Measures.

But others remark, that the expression "by day," denotes the time, whatever it be, during which the cattle are intrusted to the herdsman for custody. "If he go not," though able; meaning his not defending the cattle, through negligence, indolence, knavery or the like. MENU *thus* explains a *cárshápańa;* "A *carsha* (or eighty *racticás*) of copper is called a *pańa* or *cárshápańa.*" On which CULLÚCABHATTA thus comments; "the quantity of a *carsha* of copper is called a *cárshápańa*, and *is* also *called* a *pańa. Now,* a *carsha* is the weight of eighty seeds of the *gunjà:* for "five seeds of the *gunjá* are the first, *or forensic, másha;* sixteen of these are an *acsha* or *carsha;* and four *carshas* are one *pala.*"*

XV.

Brahme puráńa:—Should a herdsman, having received his hire, leave his cattle in a desolate forest, and go for his pleasure to the village, he shall be chastised by the king, like a surgeon *or barber,* who *leaves his master in the town*, and goes for his pleasure to the woodlands.

* AMERA'S Dictionary, in the chapter on Traders and Husbandmen. In law the *másha* contains five *racticás;* in medicine, ten.

2. When a cow, committed to the care of a herdsman, dies through his fault, he shall be compelled to make good the loss, and pay a penalty to the lord of the land.

3. If a cow die by the violence of disease or the like in the stall of its owner, *who took no pains to heal or relieve her*, that owner shall be fined, and shall pay the wages due to his herdsman.

"Leave his cattle;" leave a cow which has been seized with *any* distemper. "A surgeon;" a physician *practising* on veins or the like. As he should be chastised, if he leave his master, on whom he ought to attend, and go for his pleasure to the forest; so should this man also *be chastised*. Consequently, a surgeon, who goes for his pleasure to the woodlands, is an example mentioned for the sake of illustration. The word "*Sálácì* (surgeon)" is explained in the *Chintámeni*, a barber. Others explain the term, a person armed with a javelin (*Sálácá*) or other weapon of offence: he is mentioned incidentally.

"Pay a penalty" (XV 2): thus, by consent of many Sages, the value must be made good if a cow die by the fault of the herdsman; according to YÁJNYAWALCYA, a fine shall *also* be paid; and the forfeiture of the herdsman's wages is intimated in the *Brahme purána*. Such is the concise statement *of the law*.

"If a cow die by the violence of disease or the like" (XV 3): if she be destroyed by sickness or the like, in consequence of her owner taking no pains to heal or relieve her, though able to give relief; in that case he shall be fined by the king, and be forced to pay the wages due to the herdsman. The *Retnácara*.

Here the fine to be paid by the owner of the cow must be that which is specified under the supplementary or miscellaneous title; for there *is* no person to sue *the offender*: and in this case a taint of sin is the consequence of taking no care of the *diseased* cow.

XVI.

MENU and NÁREDA:—A flock of goats or of sheep being attacked by wolves, and the keeper not going *to repel the attack*, he shall be responsible for every one of them which a wolf shall violently kill.

2. But if any one of them, while they graze together near a wood, and the shepherd keeps them in order, shall be suddenly killed by a wolf springing on it, he shall not in that case be responsible.

Under the term "a flock of goats or sheep," are comprehended *all* beasts liable to attacks. "Being attacked;" being assailed. So the *Retnácara*. CULLÚCABHATTA *delivers* the very same *interpretation*.

"If any one of them, &c.;" if a wolf, springing unperceived out of some thicket, kill any one of those goats or sheep which were intrusted to the shepherd, and were grazing together in the forest, the shepherd does not in that case incur blame. CULLÚCÁBHATTA.

But if the herdsman carelessly pasture the cattle in a dangerous spot, although there be safe places for pasturage, blame is imputable to him; but not, in case of a casual attack by a tiger.

XVII.

NÁREDA:—By this rule shall a dispute with the keeper of all sorts of cattle be decided; and if any cows die naturally, he shall be cleared by producing their tails and horns.

"By this rule, &c.;" thus have been declared contests with keepers of all sorts of cattle, even of horses and the like. The *Retnácara.*

Consequently, in a dispute with a keeper of horses, the very rule which has been declared must be applied *as in other cases specified.*

"By producing their tails and horns;" let him prove their death in any mode whatever. The *Chintámeni.*

Else there might be suspicion of his having sold them.

XVIII.

MENU:—When cattle die, let him carry to his master their ears, their hides, their tails, the skin below their navels, their tendons, and the liquor exuding from their foreheads: let him also point out their limbs.

"Their ears, &c." under these are comprehended any tokens of the dead beast, not common *to, or perfectly similar in, all animals.* "When cattle die:" when they die at remote distances, "let him point out their limbs;" their durable parts, as horns and the rest. In some places, the text is read, "point out their horns or the like:" on that reading, other tokens, besides those generally carried as above mentioned, are comprehended under the term "or the like."

SECT. II.—*On Fines for Mischief done by Cattle.*

XIX.

MENU:—On all sides of a village or small town, let a space be left for pasture, in breadth either four hundred cubits, or three casts of a large stick; and thrice that space round a city or considerable town.

"Four hundred cubits; *literally,* one hundred *dhanush* or poles;" four cubits make one *dhanush.* "A large stick, or staff;" three casts or throws of that. Near the village on all sides a space exempted from the sowing of grain and the like, should be left for the pasture of cattle, in breadth either four hundred cubits, or three casts of a staff. Again; near a city of considerable town, it should be made thrice as large. CULLÚCABHATTA.

"Stick" (*śamyá*); the pin of the yoke. Thrice as much ground as that when thrown passes before it falls, is the space to be left round a village. The *Retnácara.*

Śamyá is explained by AMERA, the pin of the yoke.* Here the diversity of opinions should not be imputed as a fault; for it will be fully explained, that the space is not rigidly determined.

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* AMERA'S Dictionary; chapter on Traders and Husbandmen.

"*Round* a city;" *round a considerable town* resembling a city.
The *Chintámeni.*

For a greater space will be directed *to be left* round a city.

XX.

YAJNYAWALCYA :—By the choice of the inhabitants, in proportion to the *whole* land, or by the authority of the king, should the *common* pasture for kine be *regulated; but* every where a twice-born man may take, as if it were his own, grass *for his cattle,* fuel *for sacrifice,* and flowers *for oblations.*

2. Let a space be *left* between the village and the fields, in breadth four hundred cubits: let it be eight hundred cubits round a town, and sixteen hundred round a city.

"By the choice of the inhabitants;" *literally,* of the village: in proportion to the *number of* persons inhabiting the village, or according to the small or great quantity of land; or by the king's command; a space of ground should be left for the pasture of kine. Such is the sense of the *first* part of the text. The *Retnácara.*

Some good portion of land should be appropriated to the pasturage of kine and the like. The *Mitácshará.*

The second part of the text (XX) is thus explained in the *Mitácshará:* a twice-born man, in want of grass or fuel, may anywhere take grass for kine, wood for *the sacrificial* fire, and flowers for *oblations to* deities, as if they were his own, without opposition; but *he can* only *take* fruits from an unenclosed spot, for it is *thus* recorded by GÓTAMA.

XXI.

GÓTAMA :—He may take, as his own, grass and sacrificial fuel for his cattle and fire, and the blossoms of creepers and of lofty trees *for oblations;* and their fruit, if they be unenclosed.

This supposes pre-occupancy; for, should a thing be unoccupied, property also vests by occupancy in others besides twice-born men, as is declared by the same authority.

XXII.

GÓTAMA :—*A man becomes* owner of wealth by purchase, partition, occupancy, hypothecation, and gain.

As for what is again said in the following text:—

XXIII.

GÓTAMA :—He, indeed, who seizes grass without asking *permission of the owner,* or wood, or flowers, or fruits, shall suffer amputation of his hand.

This supposes some other than a twice born-man; or supposes no distress; or implies a purpose different from that of *feeding* cows and so forth. Thus, if grass or the like, belonging to a stranger, be taken by a twice-

born man, for his cows, his sacrifice, or his fire, there is no offence; but there is an obvious offence if the grass or the like were produced by *the labour of* a stranger.

Others hold, that a *Bráhmana* may, without the king's permission, take grass or the like from any piece of ground belonging to the king, and not *already* occupied by another *subject;* but any other than a *Bráhmana* can *only* take grass and the rest from a piece of ground or spot occupied by himself with the king's permission. What is declared by GÓTAMA (XXII) is intended to establish property by the occupancy of a thing not already occupied by another; or to determine the property in a case of theft.

The other verse (XX 2) is propounded to provide for the well-being of cows and other cattle, standing, lying, or moving. The *Mitácsharà.*

Others think the second text (XX 2) is intended for an example of the space *to be left,* as directed by the preceding verse (XX 1).

Between the village and the fields, a space measuring four hundred cubits should be *left* on all sides exempt from tillage; round a small town *(carvat'a)* the space should be eight hundred cubits in breadth; round a populous city, the interval should be measured by sixteen hundred cubits.

VIJNYÁNÉS'WARA.

A *danush* is a pole of four cubits. A town (*carvat'a*) is larger than a village, and less than a city. VÁCHESPATI MISRA.

The term is synonymous with large village, or *mahágráma.*

The following texts, cited in the *Retnácara,* define a village, town and city.

XXIV.

Márcandéya purána:—An inhabited place, in the midst of fields and meadow land, where men of the servile class mostly dwell, and where agriculture thrives, is called *gráma*, or village.

2. An elevated spot, which has substantial buildings, and is surrounded on all sides by a ditch, if it be half or a quarter of a *yójana* in length, and the eighth part *of a yójana* in breadth, is a city, or *pura:*

3. It is best, if there be deep water on the eastern side of it; if it be inhabited by persons of pure lineage alone; and if abject races be excluded. *Should the length be* half of that *described*, the *place is called* a town or *c'hét'a:* and *one* less than that is *called* a small town, or *carvat'a.*

That inhabited place where the servile class is numerous, and where many husbandmen reside, is named *gráma* or village, *and it is situated* in the midst of fields and grazed land. Thus, on all sides of the village, there should be pasture; and round this again should be the fields. The residence of priests, soldiers, merchants, and the like, is best in cities and towns: and that is intimated in a preceding chapter (Chap. II, v. IV.)

A place abounding in lofty edifices surrounded with walls; itself encompassed by a ditch, and spreading over two *cróśa*, or one *cróśa* only, is called *pura*: and even that is a city (*nagara*); for, in the Dictionary of

AMERA, *pur* (*the same with* pura) is mentioned as synonymous with *puri* and *nagari* (*or* nagara).* It is best if there be deep water on the east. Half of that *length, or* half a *crósa*, constitutes a town, or *c'hét'a;* and less than that, but greater than a village, is a small town, or *carvat'a*.

It is not derogatory to YÁJNYAWALCYA, that he has not mentioned the space to be left round a town or *c'hét'a?* The objection is anticipated and answered in the *Retnácara:* It must be inferred, even though not mentioned that the pasture ground for kine should be *regulated* in proportion to the abundance of cattle in the village or the like. Consequently, a space of four hundred cubits is only mentioned for the sake of illustration: the real meaning is, that pasture should be left for kine, in proportion to the *number of* inhabitants.

XXV.

MENU:—Within that *pasture ground*, if cattle do any damage to grain in a field unenclosed with a hedge, the king shall not punish the herdsman.

"Within that;" within the pasture ground of the village.

The *Chintámeni*.

XXVI.

VISHNU:—No offence *is imputable to the herdsman*, if the cattle graze, for a short time, in an unenclosed field, near the road, the village, or the pasture ground.

"If the cattle graze" is supplied *to explain the purport of the text.* Should a field, which is situated near the road, the village, or the space left for pasture, and which is unfenced, be grazed by cows or the like for a short time, there is no offence on the part of the herdsman: but if they graze there long, blame is imputed to him; for it is considered as arising from his fault.

The *Chintámeni*.

The very same *exposition is found* in the *Retnácara*.

XXVII.

NÁREDA:—The herdsman is not answerable for damage done in a field adjoining to a village or a pasture ground, and which is unfenced.

"Pasture ground;" a space of grass land reserved for feeding cows and the like: a field adjoining to that.

The *Retnácara*.

XXVIII.

YÁJNYAWALCYA:—No offence exists, if *damage be done* unintentionally in a field situated near the road, the village, or the pasture ground: but if the cattle be wilfully grazed there, the offender is liable to be punished as a thief.

Consequently the declaration, that "there is no offence if the field be near the road or the pasture ground," is restricted to the case of cattle accidentally grazing in it: and this also has been intimated by VISHNU in

* Dictionary of AMERA; Chapter on Cities.

another form; "if the cattle graze for a short time, &c." (XXVI). Such is the opinion delivered in the *Chintámeni*.

By the term used in the texts of VISHNU, NÁREDA and YÁJNYAWALCYA, "within *the pasture ground, &c.*" it is declared, that no blame *falls on the herdsman* if the field be situated near the pasture ground. But there can be no grain in the pasture ground. However, when grain is sown within the space of four hundred cubits, the pasture ground is reduced by the consent of the inhabitants or otherwise: and in the text of MENU (XXV), "within that," or there, is the seventh or local case used in the sense of proximity; as in the line, "CRÍSHNA sports in the woods (in, or) near the *Cálindí* (or *Yamuná*);" and, even according to those who hold that the name of the river has in that example the secondary sense of its neighbourhood, the word there, or within that, may in the present instance signify near that *pasture ground*. Thus others explain the text.

Should a field, situated near the road or highway, or near the village or pasture ground, be grazed by cows, without design *on the part of the herdsman or his master*, no blame is imputable either to the cow-herd, or to the owner of the cattle; that there is no offence, is mentioned, to exempt them from penalties, and from paying the value of the grain damaged. But, if the cattle be wilfully grazed there, the offender suffers punishment, as a thief, for grazing cattle there by design: namely, such a punishment as is inflicted on a thief. The text of YÁJNYAWALCYA (XXVIII) is so explained in the *Mitácshará*.

XXIX.

MENU:—Should cattle, attended by a herdsman, do mischief near a highway, in an enclosed field, or near the village, he shall be fined hundred *pan'as;* but, against cattle which have no keeper, let the owner of the field secure it.

Near a highway, or near the village, in a field of arable land enclosed with a hedge, should cattle, attended by a herdsman, *but* not restrained by him, enter the field by the gate or otherwise, and graze in it, he shall be fined a hundred *pańas:* and, as the beast cannot be fined, the herdsman must pay the fine. But the person who watches the field must drive away beasts which have no keeper, if they be found grazing there.

CULLÚCABHATTA.

XXX.

NÁREDA:—If damage be done to grain by cows or the like breaking through a fence, the herdsman shall in that case be punished, if he did not restrain the cattle, though able *to do so.*

"A sense;" an obstacle. CHANDÉSWARA.

"Breaking;" this follows the regular sense of the crude verb *criti*, cut. "The herdsman shall be punished;" if he do not restrain the cattle, he shall be fined a hundred *pańas:* for the text coincides with that of MENU (XXIX). But, perceiving the breach in the fence, if he immediately restrain the cattle, no blame is imputable to him. "Though able;" from this expression *it appears that* no blame is imputed to him, if he then happen to be unable to restrain a bull eager to approach a cow: and so in other cases. Thus other lawyers declare *the rule.*

XXXI.

USANAS :—Neither ancestors, nor deities, taste the offerings of that man who demands compensation for corn destroyed by cows.

It is thus ordained, that the owner of the corn should not take the value of grain consumed by cows. But if, violating the prescribed system of duty, he do demand *compensation*, the judge must enforce payment; for there is no exception *relative to cows* in forensic law. The judge must *of course* enforce payment of the value of grain consumed by any other beast.

It is declared, that there is no offence if damage be done to grain in a field unenclosed with a hedge (XXV); and that there is offence, if corn, in a field enclosed with a hedge, be eaten *by cattle*: what sort of a hedge *should be made?* MENU himself describes it.

XXXII.

MENU :—Let the owner of the field enclose it with a hedge *of thorny plants*, over which a camel could not look; and let him stop every gap, through which a dog or a boar could thrust his head.

Round a field of arable land, let him make a hedge of thorny plants, in such a mode that a camel standing on the other side may not overlook it; and let him stop every gap whatsoever through which a dog or a boar could thrust his head. CULLÚCABHATTA.

XXXIII.

NÁREDA :—Round a field near the highway, a hedge should be made, over which a camel could not look; which no beast could overleap; and which neither a dog nor a boar could break through.

"Over which a camel could not look;" that is, of such a height that a camel standing on one side of it could not look over it to the other side.
HELÁYUDHA.

It follows, that the hedge should be high; for, if a camel, passing by, see the corn enclosed by it, then, breaking the hedge, and impelled by hunger, he cannot be restrained by his keeper. If a low hedge be made, there is no offence in the case of mischief done by a camel *in such a field*, any more than in *the case of a trespass on* a field unenclosed by a hedge: and so in respect of elephants, horses, and the like.

Over which hedge cattle cannot reach, and see the grain within it.
The *Párijáta*.

XXXIV.

SANC'HA and LIC'HITA :—To a field near the road a hedge should be made, over which a camel could not look, and through which a dog or a boar could not open a passage.

"A passage;" *literally*, an interval: *that is*, an opportunity *of entrance*.
The *Retnácara*.

Consequently such a fence must be made, by means of which cattle may be prevented from forcibly destroying the corn. If that be not done, no penalty is incurred by the keepers of the several sorts of cattle. At what season a fence should be made, CÁTYÁYANA declares, for the benefit of the husbandman.

XXXV.

CÁTYÁYANA:—When the grain is not yet produced, let him make a strong fence; for beasts, eager after once tasting what they relish, are with difficulty hindered.

"Beasts" here signify cattle. The *Retnácara.*

"Strong:" *literally*, great: by this is suggested a hedge over which a camel cannot look, and through which a dog or a boar cannot open a passage.

"After once tasting what they relish:" the meaning is, when they taste things which are desired by them.

XXXVI.

MENU:—In other fields, the *keeper of* cattle *doing mischief* shall be fined one *pańa* and a quarter; but, in all places, the value of the *damaged* grain must be paid: such is the fixed rule concerning a husbandman.

In other fields, not adjoining to the road-side and the like, should mischief be done by cattle, the keeper shall be amerced. It should be here noticed, that the fine is one *pańa* and a quarter for every head of cattle. So the *Retnácara;* and CULLÚCABHATTA *gives* the very same *interpretation.*

In other fields, situated at a distance *from the highway and the like,* distinct fines are ordained for distinct kinds of cattle: so the *Chintámeni.* Those fines will be subsequently mentioned.

"In all places" (XXXVI); the grain consumed by *cattle* in any field, must be made good to the owner of it, by the herdsman, or by the owner *of the cattle,* according as the offence *is imputable to one or the other.* Such should be the decision. CULLÚCABHATTA.

Thus property in the field is attributed to the husbandman by this very gloss of CULLÚCABHATTA. It appears from the phrase "in all places" (XXXVI), that the grain eaten *by cattle* off a field enclosed with a hedge as abovementioned, must also be made good to the husbandman.

XXXVII.

SANC'HA and LIC'HITA:—A cow, grazing during the night, *brings on its owner, or keeper, a fine of* five *máshas;* during the day, three *máshas;* and for one hour, (*muhúrta,*)* one *másha: but* no fine *is imposed if she graze* in the village.

"Grazing;" eating until satiated. Hence, if she graze *by day* until she be satisfied, *the fine is* three *máshas.* But if she graze for one hour only, a fine of one *másha* should be levied. However, no fine shall be imposed for her grazing within the village; that is, in a field within the limits of the village and the like. A *másha* here signifies the twentieth part of a *cárshápana,* as declared by NÁREDA.

XXXVIII.

NÁREDA:—But a *másha* may be considered as the twentieth part of a *cárshápana.*

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* *Muhúrta*, the thirtieth part of a day and night.

And that is meant of silver. Accordingly the author of the *Bháshya* says:

In matters of fine it is proper to count by *máshas* of gold; but, for grain eaten by cattle, *the fines are regulated* by other *máshas, namely, those* of silver.

A *cárshápana* is also *a measure* of silver *as well as of copper;* and here a *másha* of silver contains two *racticás* or seeds of the *gunjá*, each equal to three barley-corns: as is declared by MENU (Chap. VIII, v. 134 and 135). The text of SANC'HA and LIC'HITA is thus expounded in the *Retnácara*, and also in the *Viváda Chintámeni*.

Since the author of the *Bháshya* directs the *másha* of silver in the case of grain eaten by cattle, *because he is* scrupulous of the great inequality in comparison with the fine of one *pan'a* and a quarter, whether the *másha* containing sixteen *racticás* be taken, as declared by VRĬHASPATI ("but the twentieth part of a *pala* is called a *másha*"), or the *másha* containing five *racticás*, as mentioned by MENU ("five *crĭshnalas* or *racticás* of gold are one *másha*"); *therefore* the rule is thus settled by authors, who think that the *másha* of silver, containing two *racticás*, as mentioned by MENU, should not be abandoned: if the beast eat grain during the night until it be satisfied, a fine of ten *racticás* of silver *shall be paid* to the king; if it eat so long during the day, six *racticás* of silver; if it do not eat until it be satisfied, but graze for some short time, whether by night or day, two *racticás* of silver: and the value of the grain consumed in the field must be made good to the husbandman. This proceeds on the supposition of one *paṅa* and a quarter being equal to two *racticás* of silver: if they be unequal, a distinction must be assumed, from the *sort, or from the quantity, of* grain destroyed. But others explain a *paṅa* and a quarter in the text of MENU (XXXVI), as signifying a *paṅa and a quarter* of copper.

As for the opinion, that a fine of one *másha* for a cow grazing during one *muhúrta* is directed, to obviate the doubt, "what fine should be imposed in the case of a cow grazing during twilight; because distinct rules are delivered for the respective cases of a cow grazing during the day and during the night;" and accordingly the law declares, that "twilight, called *muhúrta*, is considered as uniform, whether *the day* increase or wane;" and here the word *muhúrta* denotes a particular hour *of the day:* that opinion is wrong; for common sense opposes the same regulation, when *a cow* has grazed *in a stranger's field* during the night, whether she grazed *there* for some trifling space of time, or until she were satisfied: and there is no *real* difficulty, since twilight, exclusive of day and night, is not admitted in philosophy.

"But no fine, in the village" (XXXVII): since this has obviously the same import with the text of MENU (XXV), no fine is imposed for a cow grazing near the village, or near the highway; *it is* not *meant, that* no fine *is imposed* for *her* grazing on land appropriated to dwelling-places. "Village" is here used in the locative case with the sense of proximity, as *in the example quoted;* "CRĬSHNA sports in the forest (in, *that is*) near the *Yamuná*." Consequently there is no difficulty: and it should be so understood.

The following text elucidates what is observed in the *Chintámeni*, that distinct fines are ordained for distinct kinds of cattle:

XXXIX.

CÁTYÁYANA :—*For mischief done by* a cow, let the king compel *the owner* to pay a quarter of a *pan'a ; for* a female buffalo, two quarters : but for goats, sheep, and calves, the fine ordained is a quarter *of that which has been last mentioned.*

Here a quarter of a *paña* should be considered as the fine *ordained* if the grain were eaten during the night. A quarter of a *paña* is the fourth part of a *cárshápana.* The *Retnácara.*

Paña here signifies *cárshápana.* The *Chintámeni.*

This obviously means a *cárshápana* of silver, consisting of forty *crishnalas* or seeds of the *gunjá :* for the text of NÁREDA declares, that a *másha* is the twentieth part of a *cárshápana* (XXXVIII) ; and the text of MENU expresses, that "two *crishnalas* or *racticás* of silver are considered as one *máshaca.* A quarter of a *paña* (or ten *crishnalas* of silver) is the same with five *máshacas* of silver : and this coincides with the text of SANC'HA and LIC'HITA (XXXVII).

XL.

GÓTAMA :—Five *máshas* for a cow, six for a camel, ten for a horse or a female buffalo, and two each for a goat and a sheep.

Since *the word* horse is here exhibited in the masculine gender, the same amercement should be paid for male buffaloes and the rest which is directed for females ; and the same for a mare and for a horse. But cows and female buffaloes are instanced, considering the excellence of the female, which affords milk for consumption.

"And two each for a goat and a sheep ;" the meaning is, two and a half. To exhibit the coincidence of this text of GÓTAMA (XL) with that of CÁTYÁYANA above cited (XXXIX), some explain "a quarter," the fourth part of the fine just mentioned for a buffalo grazing in a stranger's field ; that is, a fourth part of two quarters of a *paña :* for it has the same import with the text to be quoted from YÁJNYAWALCYA (XLII). Others say, it supposes particular mischief happening without design. This rule of GÓTAMA concerns cattle grazing during the night.

XLI.

SANC'HA and LIC'HITA :—For the young of every sort of cattle, a *másha;* for a female buffalo, ten ; for an ass and a camel, sixteen ; for a goat and a sheep, four.

This text concurs with *those of* GÓTAMA and CÁTYÁYANA, in directing a fine of ten *máshas* for a female buffalo. "Sixteen for an ass and a camel," contradicts GÓTAMA, "Four for a goat and a sheep," contradicts both GÓTAMA and CÁTYÁYANA : and "a *másha* for *calves, or* the young of cattle," contradicts CÁTYÁYANA.

On this point, some hold that the connexion of terms is remote in the phrase "six for a camel ; ten for a horse or a female buffalo" (XL) : in this manner ; for a horse, or a female buffalo, ten ; for a camel, ten and six, or sixteen, and so forth ; and the meaning of "four for a goat and a sheep" is, two for a goat, and two for a sheep. "A *másha* for young cattle" is here meant of a *másha* consisting of five *crishnalas.* It should not be objected, that the *másha* of five *crishnalas* is inadmissible, because MENU has defined

the *másha* of silver as consisting of two *crishnalas* only. Since MENU has also defined the term *cárshápana* as relating to copper only, there could not be also a *cárshápana* of silver; it may therefore be said, that the several terms likewise signify those several weights of iron or other *metals*. Or, "a *másha* for young cattle" may suppose very young cattle; and the text of CÁTYÁYANA (XXXIX) may suppose older calves. The young of all sorts of cattle, or any beasts in the first period of life, are intended.

XLII.

YÁJNYAWALCYA:—*The owner of* a female buffalo, doing damage to grain, shall be fined eight *máshas; of* a cow, half that *amercement;* and *of* a goat or sheep, half *again* of this amercement:

2. For cattle eating and lying down in the field, the fine is double the amercement mentioned. It is also the same if they trespass on preserved pastures; and the fine for an ass or a camel is the same with that for a female buffalo.

A female buffalo, doing mischief in a stranger's field, shall be fined eight *máshas;* a cow half that, or four *máshas;* goats and sheep shall be fined two *máshas*. As buffaloes and the rest have no interest in wealth, the person who owns them is intended. A *másha* here signifies the twentieth part of a *paṅa* of copper; for NÁREDA records, that a *másha* is considered as the twentieth part of a *paṅa*, and the text concerns *a trespass* without design.

The *Mitácshará*.

Some remark it, as the sense of the *Mitácshará*, that the fine is *regulated by a* másha *consisting of* four *racticás* of copper. But that is erroneous; for the author of the *Bháshya* declares *fines to be regulated by* the *másha* of silver, in the case of cattle grazing *on a stranger's ground:* and thus, according to the *Mitácshará*, the fine is *determined by a* másha, *or quantity of* silver weighing five *racticás*: and that contradicts the opinion already quoted from the *Retnácara* and other works. Apprehending its inconsistency with the texts which ordain a fine of five *máshas* (XL), *the author of the* Mitácshará *adds:* the text concerns a trespass without design; meaning damage done to grain without design on the part of the keeper. But if the damage happen with his previous knowledge, the fine is that *which is* directed by CÁTYÁYANA and the rest. Such is his opinion.

Others apply the two texts which ordain fines of eight and ten *máshas*, according to the particular damage done, or particular age of the beast.

XLIII.

NÁREDA:—Let the king compel *the owner of* a cow *which has done mischief*, to pay a fine of one *másha;* and *of* a female buffalo, two *máshas;* and let the fine for goats, sheep, or young cattle, be half a *másha*.

This supposes corn consumed, but so that the root remains fit for re-planting. Such is the interpretation proposed in the *Mitácshará*.

"For cattle eating and lying down" (XLII 2): if cattle, after eating grain in a stranger's field, sleep there undisturbed, the fine shall be double; if, accompanied with their young, they graze and lie down, it shall be quadruple the fine that has been mentioned: for a text ordains—

XLIV.

Twice as much is directed for cattle abiding there, and four times as much for cattle accompanied by their young.

This *is* also *stated* in the *Mitácshará*.

"It is the same, &c." (XLII 2); even for mischief done in a preserved pasture, the fine is similar to that *which is ordained* in the case of mischief done by cattle in a field. The *Retnácara*.

"A preserved pasture;" a preserved space of ground, abounding in grass and wood. If mischief be there done, the fine is equal to that for trespasses on other fields. "If they trespass;" if buffaloes and the rest *do mischief*. The *Mitácshará*.

The *Retnácara* should also be quoted on this point. The fine for an ass or a camel is the same with that paid for a female buffalo; in whatever fine *the owner of* a female buffalo is amerced in each case, in such a fine shall *the owner of* an ass or a camel be amerced in the same case. Such is the opinion expressed in the *Mitácshará*.

XLV.

VISHNU :—If a female buffalo do injury to grain, her keeper shall be fined *máshas ;* or *if* a horse, a camel, or an ass *do so, the amercement is the same ;* if a cow *trespass*, half *that fine ;* if a goat or sheep *do mischief*, half that again: if the cattle lie down after grazing, *the amercement is* doubled.

"A horse, a camel, or an ass;" 'if *they* do injury to grain,' is brought forward *from the preceding sentence*. The *Retnácara*.

Consequently it has the same import with the text of YÁJNYAWALCYA (XLII); but VISHNU (XLV) disagrees with GÓTAMA (XL), and with SANC'HA and LIC'HITA (XLI). On this point some *lawyers* observe, that, in particular countries, an ass and a camel being *held* equal to a female buffalo, the text of VISHNU *is* there *applicable ;* in some places, an ass and a camel consuming more than a female buffalo, the text of SANC'HA and LIC'HITA there *regulates the fine*.

XLVI.

NÁREDA :—Let *the owner or the keeper of* cows be fined a quarter *of a* cárshápana; *and the proprietor or the herdsman of* female buffaloes, twice as much; another fine of a *másha* is ordained for a goat or a sheep *trespassing* with its young.

2. For cattle eating grain until they be satisfied, the fine is double; but for cattle abiding, *it is* quadruple: and the punishment of theft is ordained by the wise, for those who graze cattle *on a stranger's ground* in *their own* sight.

"A quarter;" the fourth part of a *cárshápana*, or ten *racticás* of silver. "Twice as much;" twenty *racticás* of silver. "Another fine of a *másha ;*" since the fine for goats and sheep is in every instance declared half that for a cow, it signifies a *másha* containing five *crishnalas*.

CHANDÉSWARA explains the *term used in the text*, satisfied with grain eaten; and "abiding," passing the night there after grazing. This supposes cattle pastured unperceived; but, for them who graze cattle openly *on a stranger's ground*, the punishment of a thief is ordained. "Who graze cattle in their sight" (XLVI 2); who pasture them by force, even in the presence of the husbandman.

In the *Chintámeni* a similar exposition is delivered: it is there said, that the sense *of the first hemistich* (XLVI 2) is *this*; if they pass such a length of time that they lie down after eating grain, and afterward, hunger returning, graze *there* again.

We cannot discover why it is said "even in the presence of the husbandman;" for every difficulty is removed by saying, "in the *sight or* presence of the herdsman, who suffers the cattle to consume the grain."

XLVII.

NÁREDA:—But if a cow, straying by the fault of the herdsman, damage a field, no penalty is in that case exacted from the owner: the herdsman suffers the punishment of that *offence*.

2. But he (*the owner*) should restrain the cows from *fields of* grain: if they graze there *with his knowledge*, the blame falls on both master and herdsman; the master shall be compelled to pay the value of the grain and a fine, and the herdsman shall be scourged.

In a *preceding* text (XLVI 1) a rule is propounded for an amercement of a quarter of a *cárshápana*, and so forth, *to be levied* on cows and other cattle. That cannot be strictly applicable, because cows and the rest have no property; therefore *the Sage* himself announces the inference (XLVII). "Straying;" going out of sight. If cows intrusted to a herdsman destroy grain out of his master's sight, by the fault of that herdsman, the penalty falls on him alone: in a similar case, if their owner see them eating the grain, he should drive them off; but if he restrain them not, he must pay the amercement, and make good the value of the grain consumed: for such is the sense attributed to *the word* penalty, since the master is concerned. To chastise the herdsman, a scourging is directed: that also is a penalty. This should be understood: and CHANDÉSWARA virtually gives the same interpretation.

XLVIII.

YÁJNYAWALCYA:—As much grain as shall be destroyed, so much produce shall be *paid* to the husbandmen; the herdsman shall be scourged; but the owner of the cattle incurs the fine already declared.

Grain is mentioned to denote generally the produce of fields. As much straw, grain, or the like, as is destroyed by cows or other cattle, so much produce shall the owner of them be compelled to pay to the owner of the field; according to the valuation determined by arbitrators, in this form, "from so much land the produce is so much." But the herdsman shall only be beaten; he shall not be compelled to pay for the produce: the scourging of the herdsman, accompanied by the pecuniary fine abovementioned, must be applied to the case of damage done to grain by his fault (XLVII 1). Again: the owner of the cattle incurs the fine already declared, if grain be

injured by his own fault; *he is* not *liable to* a scourging. But, in every case, the produce must be made good by the owner of the cattle alone; for he participates in the produce of the field, by means of milk obtained from female buffaloes and the like, fed on grass, the produce of that field. The produce, remaining above the *quantity* consumed by the cows and the like, should be taken by the owner of the cattle; for he has absolutely bought it by payment of the price adjudged by arbitrators. VIJNYÁNÉSWARA.

Consequently, in those cases also where the herdsman shall be amerced, the value of the grain consumed shall be paid by the owner of the cattle to the proprietor of the field. Such is his meaning. But that is not the opinion of CHANDÉSWARA; for, in a gloss on the following text of NÁREDA (XLIX), he says, "if the corn be destroyed, together with its root, both *the master and herdsman* being in fault, the master must pay grain to the amount of the damage, and a fine."

XLIX.

NÁREDA:—But if the corn be destroyed, together with its root, let the owner *of the land* receive the *quantity of* grain, *which would have been produced* from that *field*; let the herdsman be dismissed with blows; and let the amercement fall on *his* master.

In the first part of the text of YÁJNYAWALCYA (XLVIII) it is directed, that the grain shall be received by the husbandman; but the person from whom it shall be received is not mentioned. Therefore, since the king must receive the amercement, it may thence be argued, from suggestions of common sense, that, in the case where the herdsman suffers the punishment, *or incurs the penalty* (XLVII 1), both the husbandman and the king receive a penalty.

In the preceding texts fines are declared against female buffaloes and other cattle; and that is incongruous, since they have no wealth: hence it is said, the herdsman shall be scourged (XLVIII). But (*it is added*) the owner of the cattle incurs the fine; this, however, supposes the case of a fault on the part of the owner of cattle. CHANDÉSWARA's opinion must be so understood. Consequently it should be held, on his construction *of the law*, that a penalty must also be paid to the owner of the field, by the same person, and in the same case, in which a fine is paid by that person to the king.

"With blows" (XLIX); with hurt proportioned to the offence. Corn is considered as destroyed, together with its root, when the mischief is such that it cannot be re-planted. CHANDÉSWARA.

Is not this text superfluous; since the same sense is deduced from a former one, "the master shall be compelled to pay the value of the grain and a fine" (XLVII 2)? This text is a reply to the question, to whom shall the value of the grain be paid? and thus, if the corn can be re-planted, and the crop be *so* obtained in consequence of a pecuniary payment *for the charge of re-planting the corn*, an equivalent shall not be again paid for the *plants* eaten.

L.

VISHNU:—And, in every case, *the offender shall be compelled to pay* the value of the grain destroyed.

"Shall be compelled to pay" must be supplied in the text. "In every case;" whether the cattle be attended or unattended. The *copulative* "and" connects the subject with the fine *payable* to the king. The *Retnácara.*

LI.

NÁREDA:—But, to that man who demands *compensation for* grain consumed by cows, *the value of* it must be paid, as determined by arbitrators: wherever destroyed,

2. Grass must be made good to its owner, and grain to the husbandman. A fine indeed is also ordained, if corn be trodden down by cows.

"The grain consumed;" in proportion to the grain consumed, *must payment be made.* "Grass;" *common* herbage: and this payment for herbage *occurs* in the case of a reserved pasture. The *Retnácara.*

"Grass;" blades of corn. "The owner;" the proprietor of the cattle. The blades of corn or the grain must be made good by him to the husbandman. Such *is* the sense of *the texts.*

The compensation may be taken *consistently with municipal, but not with moral, law,* for it is a cause of *sinking to* a region of torment. It should not be taken *by a righteous man,* for *that is discouraged by* the text of UŚANAS above cited (XXXI). The *Chintámeni.*

The meaning of *that gloss of* the *Chintámeni* is, that NÁREDA intimates a right of taking *compensation,* by this expression "that man who demands *it.*" "As determined by arbitrators:" adjudged by arbitrators in this form, "so much grain *would have been produced* in this field."

The *apparent* contrariety of *texts* propounding inconsistent fines for the very same offence, must be reconciled by regulating *the fine* according to *the trespass committed* by day or night, with or without design. The *Retnácara.*

Thus the *apparent* inconsistency *of the texts* of GÓTAMA, YÁJNYAWALCYA and the rest, should be reconciled, as proposed in the *Mitácshará* and other works. Such also is the opinion *intimated* in the *Retnácara.*

SECT. III.—*On Trespasses not finable.*

On the subject of herdsmen,

LII.

NÁREDA *ordains:*—If he be seized by the king or by a crocodile, struck by thunder and lightning, bitten by a serpent, *hurt by a* fall from a tree,

2. Smitten by a tiger or the like, or attacked by disease, there is no offence on the part of the herdsman; nor *is* any blame *imputable* to the owner of the cattle.

If the herdsman be seized by the king for the purpose of *employing him in* the performance of work, or if he be seized by an alligator; under such circumstances, should grain be eaten by the cattle committed to his charge, no blame is imputable to him. If he be struck "by thunder and

lightning;" a distinction must be supposed between these, from some difference in the mode *in which he is struck*. Sometimes a man survives, though struck by thunder and lightning: therefore no blame is imputable to a herdsman affected by such an accident. "Nor to the owner of the cattle:" if the herdsman die in consequence of such an accident, no blame is imputable to the owner of the cattle, provided he was ignorant *of the trespass*.

LIII.

YÁJNYAWALCYA:—A bull, consecrated cattle, a cow which has lately calved, a stray, and other beasts which are not attended by a keeper, should be set free, *for* they are impelled by GOD and the king.

"A bull" kept for impregnation. "Consecrated cattle," dismissed in honour of the deity, according to the form for consecrating bulls. "A cow which has lately calved;" within ten days after her calving. "A stray;" wandering from its own herd, and coming from another country. These "should be set free;" even though they consume a stranger's grain, no fine shall be *levied*. Cattle also, "which are not attended by a keeper, are impelled by GOD and the king;" they are urged by GOD and the king; therefore, if they destroy grain, no fine shall be levied. Under the term "other beasts," elephants, horses, and the like are comprehended; and they are mentioned by UŚANAS. The *Mitácshará*.

In the *Retnácara* also, the same *exposition is given*. Since a fine cannot be imposed for consecrated cattle, which have no *human* owner, the mention of them *must be intended* for the purpose of illustration. As consecrated cattle occasion no amercement, so bulls and the rest *occasion none*. This also *is noticed in* the *Mitácshará*.

A bull cannot be restrained. Consecrated cattle are beasts dismissed in honour of the deity. As land dedicated to the deity, and the vessels appropriated to worship, are held and kept by the *instituted* worshipper of the deity; so, if some person feed, with grass or the like, cattle consecrated by any man, it might be questioned whether he should be liable to a fine; and since it might be questioned, in the case of a bull dismissed, whether the dismisser be liable to a fine, because he is the remote cause of the trespass, *therefore* it is declared *that* no fine *shall be imposed*: or it is so declared, on the doubt whether the keeper might be fined for mischief done by consecrated cattle attended by a keeper. It might be questioned, whether a fine should be *levied for the trespass* of a stray, when the owner is ascertained by long watching the beast: and it is declared, that no fine shall be exacted for the transgression of those *herdsmen* who abscond through fear of GOD or the king; nor from owners of unattended cattle, provided the cattle be fortuitously unguarded; nor for cattle terrified by the fall of thunder or the like. Thus others expound the law.

"Strays," coming from another village, or wandering from the herd, *and* which are not attended by a keeper. Such is the sense *of the text*. The meaning is, that there is no offence, if cattle, running away on seeing an army, or on hearing *some frightful* noise or the like, graze in a stranger's field. The *Chintámeni*.

But the sense is thus *stated* in the *Retnácara*; cattle which have strayed in consequence of rain or the like, through the act of GOD, or through *some act of* the king's officers, without any fault on the part of the herdsman, should be set free.

But "or" is supplied in the *Párijáta;* "or *those* which are not attended by a keeper." In fact, it should be assumed both ways; for they are *both* equally pertinent.

LIV.

MENU:—For damage done by a cow before ten days have passed since her calving, by bulls *kept for impregnation*, and by cattle consecrated to the deity, whether attended or unattended, MENU has ordained no fine.

A cow within ten days after her calving, bulls dismissed with marks of the trident and discus,* cattle dedicated to the deity, whether attended or unattended, MENU has declared not finable when found grazing in corn. Since even consecrated bulls are kept by herdsmen among cows for the sake of impregnating them, it is possible that they may be attended by a keeper.

CULLÚCABHATTA.

"Bulls" kept for impregnation. The *Chintámeni.*

"Before ten days have passed since her calving;" the meaning is, if ten days have not elapsed since her calving.

LV.

NÁREDA:—A cow within ten days after her calving, a bull, horses and elephants, should be diligently kept off; their owner is not blameable *for their trespasses.*

"Horses and elephants," appropriated to the protection of the subject.

The *Retnácara.*

LVI.

UŚANAS:—For elephants and horses no fine *is allowed*, since they are considered as defences of the subject; nor for cattle blind of one eye or lame, nor for bulls marked *with the token of consecration;*

2. Nor for *a* stray, nor for a cow which lately calved, nor for one which desires the male; nor for cows, during jubilees, nor at the season of obsequies.

"Lame;" cripple. By the terms "blind of one eye or lame," is here denoted cattle very much disabled. "Bulls marked;" distinguished by the mark of a trident and the like. "Perverse" (*for* CHANDÉSWARA *reads* abhichárinì, *instead of* abhisárinì *concupiscent;*) one which bears excessive beating *without obeying its driver.* The *Retnácara.*

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* The figure of a trident is stamped with a hot iron on the right shoulder, and a circle or discus on the left ham of the steer which is dismissed with four heifers at obsequies and other occasions of mourning: the same marks are made with sanders wood, instead of being stamped with a hot iron, on a steer dismissed at a marriage or other occasion of rejoicing. The trident betokens the consecration of the bull to RUDRA: it is not so obvious what is intended by the discus, which is the weapon of VISHNU; for it does not appear that the bull is consecrated to this deity. T.

In the *Párijáta* it is read *abhisárinì*, and explained "one which desires the bull." "Horses," belonging to the king; for they are a defence to the subject. As for what is declared by GÓTAMA, "ten for a horse or a female buffalo" (XL), that concerns horses belonging to traders and the like: consequently there is no inconsistency.

In the *Chintámeni* the reading is, *vyabhichárinì*; it signifies one which is much disposed to run away *from its keeper*. The words "blind of one eye or lame," are *there* expounded as in the *Retnácara*.

"Nor for cows;" consequently, should some inconsiderable mischief be done by cattle belonging to owners wholly occupied in the celebration of a festival or the like, no fine *shall be exacted*. Thus other *lawyers explain the text*.

LVII.

SANC'HA and LIC'HITA:—Small cattle, and animals of general use, may not be driven away; *the owners of* mules, elephants, and horses, are exempt from fines; such beasts are ungovernable, and should be gently driven away.

"A mule," born of a mare by an ass. "Ungovernable;" beasts which cannot readily be driven away. The *Retnácara*.

"Small cattle;" calves, *or young cattle*, may not be driven away.

"Animals of general use," such as cats and the like, occasion no amercement, even though they do mischief: those *animals* which are of general use, or which suit the purposes of all, should be maintained by all. "Mules, elephants, and horses," appropriated to the protection of the subject. Thus others *expound the law*.

But in the *Chintámeni* the reading is, "small cattle, and ungovernable mules, elephants, and horses." "Ungovernable" is explained unmanageable.

The reading of the *Pracáśa* and *Párijáta* is *abadhya* (explained "not to be smitten,") instead of *avaśya*, ungovernable.

LVIII.

CÁTYÁYANA:—If cattle of the lowest, highest, or middle sorts be beaten, should their owner sue *the offender*, let the king adjudge a fine.

2. But VRĬHASPATI permits the seizure and chastisement of beasts which trespass in fields, flower gardens, reserved pastures, houses, or stalls for cattle.

"Stalls, *or paddocks*;" places abounding in grass. "Seizure;" binding *or tying*. CHANDÉSWARA.

There is no offence in beating or tying cattle which trespass in a house or the like. VÁCHESPATI MISRA.

But the reading approved by him is *pasu rájishu*, among strings of cattle, instead of *pasu vát'ishu*, in stalls for cattle: and preserved pastures signify places abounding in grass.

In the first text (LVIII 1), "*against the striker*" must be supplied after the words "adjudge a fine:" and the *second* text is recited by Misra, with these words premised, "the Sage declares an exception to that rule." Thus, if he strike cattle without a fault, the striker shall be amerced; but not if the cattle trespass in a field or the like. Such is his opinion.

But others hold, that striking without provocation should be considered under the title of Assault and Violence; under the present head, it is permitted to strike cattle if they transgress: in that case, their owners, prosecuting the striker, shall be amerced. The Sage propounds the transgressions in the second verse (LVIII 2).

In the *Retnácara*, "flower-gardens and reserved pastures," are explained lands cultivated by a man himself for gardens or the like. Or "flower-gardens" may signify gardens in general; and "reserved" spots, fields of pot-herbs or the like adjoining to the habitation.

LIX.

Menu:—These rules let a just prince observe in all cases of transgression by masters, their cattle, and their herdsmen.

Let a king, excelling in justice, observe these rules above declared, in cases of transgression by masters and herdsmen not guarding *their cattle*, and in cases of damage done to grain by cattle.

BOOK IV.

ON THE

DUTIES OF MAN AND WIFE.

CHAP. I.

ON THE

DUTIES OF A HUSBAND.

SECT. I.—*On the Necessity of guarding Women.*

Is it not impossible that there should be such a title of judicial procedure as the Duties of Man and Wife, since litigation is forbidden, in a controversy between man and wife, by a text of civil law quoted in the *Mitácshará* (Book III, Chapter I, v. X)? Of this question CHANDÉSWARA gives a solution: 'Although a suit in the king's court, conducted by the wife and husband as plaintiff and defendant, be forbidden, yet the king may be privately informed by either of them; and if they deviate from that conduct which is enjoined to them in regard to each other, they must be confined to their own sole duty, by means of punishment and the like *denounced* by the king; else, *(if they persist in misconduct,)* they shall be chastised:' to intimate this, the duties of man and wife are propounded under a title of forensic practice.

But the author of the *Mitácshará* argues, from the law *which permits the husband to appropriate the wealth of his wife in certain cases* (Book I, v. CCXCI), that, should he dissipate the wealth of his wife in other circumstances than *the pressure of* famine and the like, and refuse to repay it on demand, though he actually possess wealth, a suit between a married couple is in that case admissible. *But* the litigation of teachers, husbands, and the rest, is not laudable, either in a moral or a civil view; therefore pupils, wives and the rest, should, in the first instance, be discouraged by the king or the court: such is the implied sense of the verse (Book III, Chapter I, v. X). But, in very important cases, even the suits of pupils and the rest may be entertained in the form mentioned.

But others hold, that this verse (Book III, Chapter I, v. X) only prevents the recourse of husbands and the rest to the king's court; for it is declared (Book III, Chapter I, v. XI), that wives and the rest, committing

faults, may be corrected by their husbands and so forth: but if husbands and the rest transgress, there is no redress without application to the king. In this text (Book III, Chapter I, v. X) the meaning is, "mutual litigation;" and thus the independence of wives is incidentally forbidden, to establish that law concerning man and wife, and to denounce punishment for a woman asserting independence.

I.

VRĬHASPATI:—This law concerning adultery has been declared; next hear the whole rule of conduct for man and wife, as propounded by me.

"Adultery;" corrupting the wife of another. "The whole rule, &c." hear the collection of *rules for* the mode of conduct and behaviour of man and wife towards each other.

II.

MENU:—I now will propound the immemorial duties of man and woman, who must both remain firm in the legal path, whether united or separated.

I will declare the prescriptive duties of man and woman, persevering, whether united or separated, in the path of duty enjoined *by the law;* namely, the mutual fidelity of man and wife. If the mutual duty of husband and wife be violated by one forsaking the other, the transgressor shall be confined to his duty even by penalties imposed by the king; therefore it is mentioned among *subjects of* judicial procedure. CULLÚCABHATTA.

"Immemorial;" the term is explained, in the *Retnácara,* indispensable. "United," by dwelling in the same house or the like: "separated," by residing abroad and so forth. But YÁJNYAWALCYA does not mention the duties of man and wife among forensic matters.

MENU declares the duties of man and woman.

III.

MENU:—Day and night must women be held by their protectors in a state of dependence; *even* in *lawful and innocent* recreations, being too much addicted to them, they must be kept *by their protectors,* under their own dominion.

Women must be ever held in subjection by their husbands or protectors; even in respect of unforbidden recreations, such as matters of beauty and taste, (being *too much* addicted to them,) they must be reduced under their *protectors'* own dominion. CULLÚCABHATTA.

Consequently they should not even view paintings, eat mixed food, or wear jewels or the like, without the permission of their husbands or other protectors.* If they were in a state of independence, what harm would ensue? NÁREDA declares *the consequence.*

* The inference, drawn by the compiler, obliges me to alter the version of this text. The passage itself, and the gloss of CULLÚCABHATTA, would bear the construction which Sir W. JONES had put on it. (Chapter IX, v. 2.)

IV.

NÁREDA:—Through independence, even women born of noble families would swerve from their duty; hence the lord of created beings has established their *perpetual* dependence.

"*Noble* families; honourable families. The *Retnácara.*

"They would swerve from their duty;" *literally,* they are utterly lost; they are guilty of disloyalty and other offences; thus, because they know not what is legal and illegal for those who live exactly according to sacred ordinances, (since they are not qualified to study sacred literature;) and because they cannot be instructed, (since they are not in a state of subjection to their husbands, while they assert their own independence;) they would violate the duties of their class and the like for the temporal gratification of enjoying *the society of* strangers, and be perpetually occupied in viewing paintings and the like. Again; if they dispute the authority of their protectors, and covet independence, they shall be compelled by the king, when informed of their misconduct, to abide by their duty.

MENU specifies those who are meant by the term "protectors," or husbands and the rest.

V.

MENU:—Their fathers protect them in childhood; their husbands protect them in youth; their sons protect them in age; a woman is never fit for independence.

Let her father guard a woman, before her nuptials; afterwards let her husband guard her; and, on failure of him, let her son protect her: therefore a woman shares not independence at any period whatsoever. "Their husbands protect them in youth;" this is indefinite, for sons and others also protect *young* widows remaining with their children. CULLÚCABHATTA.

VI.

YÁJNYAWALCYA, in the first chapter of his code:—Let her father guard a maiden; let her husband guard a married woman; but let her son guard her in age: or, on failure of these, let their kinsman protect her. In no instance is the independence of a woman *allowed.*

"Married;" wedded. "Their kinsman;" relations of the sons.
The *Chintámeni* and *Retnácara.*

Before her hand be taken *in marriage,* let her father preserve her from improper conduct; after that, let her husband guard her; and after his death, *let* her sons guard her in old age: on failure of those who have been mentioned, the kinsmen *protect her;* or if there be none, the king (VII): therefore, "in no instance is the independence of women allowed."
VIJNYÁNÉSWARA and 'SÚLAPÁNI.

VII.

*Uncertain:**—But, on failure of *kindred on* both sides, the king is the ruler and protector of a woman.

* The fragment varies little from a verse subsequently cited (XIII 3). T.

VIII.

HÁRÍTA:—By violating their *obligation of* fidelity to one only *husband*, and by receiving the embraces of a stranger, vicious women confound families; *for*, a son begotten by an adulterer while the husband is alive is a *cunda*, or, after his death, a *gólaca:* therefore let the husband guard his wife from the assaults of lust. If she be lost *through vice*, the *honour of the* family is forfeited; if that be lost, the *pure succession of* progeny is lost: through that loss, the sacraments of deities and of manes are destroyed; those sacraments being destroyed, duty fails; duty failing, *the husband's* soul is lost; and his soul being lost, every thing is lost.

"Their obligation of fidelity to one only husband;" the rule or religious obligation of *fidelity to* one only husband. "By violating that;" by failing therein, they confound "families" or houses. "Progeny;" sons, grandsons, and other offspring. The *Retnácara.*

By receiving the embraces of a stranger, women becoming vicious, confound and mingle families and races; for they introduce the offspring of one man into the family of another. "If the wife be lost," (if she be guilty of violating her duty,) the past generations, father, grandfather and so forth, are defiled; and thence future successive generations of sons and so forth are defiled. By this defilement of progeny, rites *in honour* of deities and other *religious ceremonies*, are polluted: hence duty is not fulfilled; and the soul, therefore, sinks to a region of torment. Or else, through failure of progeny, the merit of rites performed by a son is not obtained, since the man himself has no male issue: and hence, the purpose of human life is unattained by him; for all the purposes of human life *(wealth, virtue, love of* GOD, *and final beatitude)* depend *for their accomplishment* on the merit of duty *observed*. Thus others explain the text.

IX.

MENU:—Women must, above all, be restrained from the smallest illicit gratification; for, not being thus restrained, they bring sorrow on both families:

2. Let husbands consider this as the supreme law, ordained for all classes; and let them, how weak soever, diligently keep their wives under lawful restrictions:

3. For he who preserves his wife *from vice*, preserves his offspring *from suspicion of bastardy*, his ancient usages *from neglect*, his family *from disgrace*, himself *from anguish*, and his duty *from violation*.

Women should, especially, be restrained from the smallest illicit gratifications, which produce any evil consequences: much more should they be restrained from the greatest; for, by neglect of restraint, both the families of their husbands and fathers experience sorrow. CULLÚCABHATTA.

The sorrow, *brought on both families*, has been described by HÁRÍTA (VIII); shame and disgrace *are also brought on them*.

Therefore let husbands known this rule for guarding wives, in the mode described by a subsequent verse, to be the first of all duties incumbent on men of all classes, as well *Bráhmanas* as others: and let even the blind and the lame be diligent in restraining their wives. CULLÚCABHATTA.

"How weak soever:" by this it is intimated, that it is *also* necessary for those who are strong. "Husbands," or protectors, being expressed in the plural number, comprehend fathers and other protectors abovementioned (V).

Thus, because he who guards his wife, preserves his offspring, since unmixed and undefiled progeny is obtained; and since he preserves approved ancient usages, the honour of his father, grandfather, and the rest of his ancestry, himself, as the parent of pure offspring, and his duty by means of obsequies performed for him by such offspring; (for *all* these are effected through the purity of his wife:) therefore let him be diligent in guarding her. This may be supplied, from what had preceded. CULLÚCABHATTA.

Thus, the very same is said by MENU, which has been delivered by HÁRÍTA.

After mentioning mixed classes, PAI'T'HÍNASI thus proceeds:

X.

PAI'T'HÍNASI:—Therefore guard wives, lest mixed classes should spring from them.

Vigilantly careful lest mixed classes should spring from their wives, let husbands *therefore* guard them.

XI.

Smriti,* quoted in the *Retnácara*:—Cautious men! gaurd your offspring, and do not suffer the seed of a stranger to be sown in your field: men guard, from the embraces of another, a wife *whom they have married while a* virgin.

This obviates *such* a reflection as the following: "they will guard themselves; why should I *be* diligently *watchful?*"

XII.

VRIHASPATI:—A woman must be carefully restrained from the smallest illicit gratification; night and day she should be guarded by her mother-in-law, and by other venerable matrons.

This indicates the subjection of women to their husband's mother and the rest.

XIII.

NÁREDA:—After the death of her husband, *the nearest kinsman on* his side has authority over a woman who has no son; in regard to the expenditure of wealth, the government of herself,† and her maintenance, he has full dominion.

* Quoted from A'PASTAMBA. See Book V, v. CCLI.

† The preservation of wealth: a various reading in Book V, Chap. VIII.

2. If the husband's family be extinct, or the kinsman be unmanly, or destitute of means to support her, or if there be no *sapindas*, a kinsman on the father's side shall have authority over the woman:

3. But if the kindred on both sides fail, the king is considered as the protector of the woman; he shall guard her, and shall chastise her if led away from the path *of virtue*.

"Kinsman on the husband's side;" of his father's or mother's race, in the order of proximity. "Expenditure of wealth;" gift or other alienation of property. "Government of herself;" restrained from illicit gratifications. "Maintenance;" means of subsistence. Thus, without his consent, she may not give away any thing to any person; nor indulge herself in matters of shape, taste, smell or the like: and if the means of subsistence be wanting, he must provide her maintenance. But if the kinsman be "unmanly," (deficient in manly capacity to discriminate right from wrong;) or "destitute of means to support her," (if there be no such person able to provide the means of subsistence;) or if there be no *sapindas*: then, anyhow determining, from her own judgment, on the means of preserving life and duty, let her announce her affinity in this mode, "I am the wife of such a man's uncle;" and if that be ineffectual, let her recur to her father's kindred: or, on failure of these, recourse may be had even to her mother's kindred; but, on failure of these, "the king shall chastise her, if led away from the path *of virtue*." Consequently, the king has no right to chastise her in the first instance; but if she desert her husband, or other protector, he is competent to re-establish her guardian's authority; and he shall not impose a fine on account of her deviation from the path of virtue, but on account of her deserting her protector. Again; the maintenance of a woman who has no kindred must be assigned by the king. Thus some explain the law.

XIV

MENU:—Reprehensible is the father who gives not *his daughter in marriage* at the proper time, and the husband who approaches not *his wife* in due season; reprehensible also is the son who protects not his mother, after the death of her lord.

A father, not giving his daughter *in marriage* at the proper time for disposing of her in wedlock, is culpable: since a text ordains that a damsel should be given in marriage before her courses, the proper time for disposing of her in wedlock precedes her puberty. A husband, not approaching his wife in due season, is culpable: and a son, not protecting his mother after the death of her lord, is despicable. CULLÚCABHATTA.

A father not giving *his daughter in marriage*, and a husband not approaching *his wife in due season*, are both culpable in regard to those women; since the natural passion, implanted *in the human race* by the divinity, is not to be endured. Hence these persons should be punished as offenders: but the woman is not justified in misconduct; for no law permits it. Thus others *comment on the text*.

XV.

VRĬHASPATI:—The father who gives not *his daughter in marriage* at the proper season, the husband who approaches not *his wife* in due season,

and the son who gives not support to his mother, are criminal, and shall be punished according to the law.

If a husband approach his wife in due season, her desire of another man, from a wish to bear issue, is obviated; but if her passions be vehement, she should be approached by her husband at other unforbidden times.

"And the son who gives not support to his mother;" from the word "and" it also appears indispensable that the father or husband should give a maintenance to a daughter or wife. Thus some expound the law.

XVI.

VÁSISHT'HA:—As often as a virgin's courses recur, who desires and demands marriage with a man of equal class, so many beings are destroyed by the fault of her father and mother: thus is the law declared.

XVII.

PAIT'HÍNASI:—Before her breasts are prominent, a girl should be given in marriage: both he who gives *a damsel in marriage* after her menses have appeared, and he who receives *such a damsel*, sink to a region of torment; and the father, paternal grandfather, and great-grandfather of *each* are born again in ordure: therefore should a damsel be given *in marriage* before her menses appear.

If her father be dead, it should be understood that the successor to his wealth, or other competent person, *must give her in marriage*.

XVIII.

YÁJNYAWALCYA:—If there be no persons *competent* to give her in marriage, let the damsel herself choose a suitable bridegroom.

XIX.

MENU:—The husband, after conception by his wife, becomes himself an embryo, and is born a second time here below; for which reason the wife is called *jáyá*, since by her (*jáyaté*) he is born again.

The husband, impregnating his wife, assumes the state of an embryo, and is born again of her in the person of his son; that is the very reason for calling a wife *jáyá*, since by her he is born again. CULLÚCABHATTA.

The meaning is, that the word is formed with a termination in the sense of containing; "she in whom he is again generated."

What is deduced from this? The Sage declares *the inference*.

XX.

MENU:—Now the wife brings forth a son endued with similar qualities to those of the father; so that, with a view to an excellent offspring, he must vigilantly guard his wife.

Because it is declared by the law, that she produces a son similar to the father, whether legitimate or illegitimate, (an excellent son, if she

submitted to an excellent man; and a bad son, if she submitted to a vicious man;) therefore, with a view to excellent offspring, he must vigilantly guard his wife. CULLÚCABHATTA.

Thus the expressions of MENU and HÁRÍTA were suitable: "he preserves his offspring *from suspicion of bastardy*" (IX 3); and, "*the pure succession of* progeny is lost *by her misconduct*" (VIII). And the inferible sense is, that a wife should be guarded with a view to excellent offspring.

XXI.

SANC'HA and LIC'HITA:—Women bring forth sons endued with similar qualities to those of the man on whom their thoughts are fixed in the season of passion; as a black calf springs from a black bull, and a white calf from a white bull. But the influence of the female is great, since mixed classes *thence* originate.

"Thence" (*from females*) must be supplied. The *Retnácara.*

"The influence of the female is great;" the influence of the wife is greater than that of the husband. Thus, although the husband be endued with excellent qualities, the offspring may be vitiated through the faults of the wife.

XXII.

MENU:—Such *women* examine not beauty, nor pay attention to age, whether *their lover be* handsome or ugly; they think it is enough that he is a man, and pursue their pleasures.

2. Through their passion for men, their mutable temper, their want of settled affection, and their perverse nature, (let them be guarded in this world ever so well,) they soon become alienated from their husbands.

They do not examine desirable figure; nor regard youth or age: but, whether a man be handsome or ugly, they think his manhood sufficient, and receive his embraces. Since, at sight of a man, they desire fruition, since their temper is not constant, and since they are naturally void of settled affection, however diligently guarded in this world, they soon become alienated from their husbands, leaning to disloyalty. CULLÚCABHATTA.

No man should be confident, that, on account of his youth and beauty, a woman will not recur to any other man, old or ugly. A woman has no settled tenderness, even for her family and the like. The cause is mentioned: her temper is naturally mutable; and, through want of settled affection for her husband, she fails in the submission due to him.

XXIII.

MENU:—Yet should their husbands be diligently careful in guarding them; well knowing the disposition with which the lord of creation formed them.

Knowing the disposition implanted in them when the universe was framed by the creator, and which disposition is described in the two preceding verses (XXII), let their husbands *therefore* apply the utmost attention to guard them. CULLÚCABHATTA.

Disloyal passion is natural to them, and springs not, *in particular instances*, from *peculiar* defects: and this fault *in their dispositions* should not be imputed to them; it is derived from nature, and therefore they should not be contemned merely for their mutable temper.

XXIV.

MENU:—MENU allotted to such women a love of their bed, of their seat, and of ornament, impure appetites, wrath, weak flexiblity, desire of mischief, and bad conduct.

MENU allotted to women, at their first creation, a propensity to their bed, to their seat, and to ornaments, impure appetites, wrath, weak flexibility, mischievous inclinations, and ill behaviour; therefore they must be diligently guarded. CULLÚCABHATTA.

The *term explained* "weak flexibility," *may signify* crooked proceeding, *or fraud*. Thus MENU declares their defects natural.

XXV.

MENU:—Women have no business with the texts of the *Véda;* thus is the law fully settled: having, therefore, no evidence *of law*, and no *knowledge of expiatory* texts, sinful women must be *as foul as* falsehood itself; and this is a fixed rule.

None of the ceremonies at the birth of children, and so forth, are performed for females with holy texts. This limitation of the law is fully settled. Hence, through the want of solemn rites accompanied with holy texts, they are not devested of sin; through the want of evidence of law and scripture, they are not acquainted with the system of duties; and having no expiatory texts), *that is*, being incapable of expiating a sin actually committed, since they are debarred from the silent repetition of expiatory texts;) women are as foul as falsehood *itself*. Such is the restriction of the law. Therefore a woman should be vigilantly guarded: this is implied in the text. CULLÚCABHATTA.

"Having no evidence of law;" wanting that evidence which induces steadiness in engagements and the like. "Falsehood:" their conduct is tainted with falsehood. The *Retnácara*.

The text shows *a* further *cause of the* evil *disposition* of women naturally ill disposed: at their birth and so forth, rites are not celebrated with holy texts; hence they are not sanctified. "Having no evidence *of law;*" or, otherwise interpreted, having no organs of sense (*nirindriyàh*): by this it is intimated that they have no knowledge of what is lawful and unlawful, although they have visual, mental and other faculties. "And no texts:" by this is denoted their exclusion from the study of the *Védas*. From this cause, though *physically* existent, they are *morally* non-existent or false beings. It follows, that women should be avoided, since they are thus vile: and it is shown, that they cannot, of themselves, preserve virtue, or expiate sins. Thus others expound the text.

XXVI.

MENU:—To this effect many texts, which may show their true disposition, are chanted in the *Védas:* hear now their expiation for sins.

It has been said, that an inclination to disloyalty is natural to women; on this point, he cites the authority of the *Véda:* many revealed texts, which show the true disposition of women, and their disloyal propensity, are read in the *Védas;* hear such of those texts as are solemn expiations for disloyalty. Since only one text is quoted,* the meaning is, "hear the text:" and the plural number is used for the singular, under the general rule; "any inflection supplies the place of another *in the scriptures and in the works of Sages.*

CULLÚCABHATTA.

"Texts;" passages of holy writ. "The *Védas;*" the scriptures. "Their true disposition;" their natural temper. Of those texts of the *Véda,* hear that which is an effectual expiation for mental disloyalty; that you may know the true disposition of women. The text should be so supplied.

The *Retnácara.*

XXVII.

DACSHA:—Like a leech, all women, though won by ornaments, apparel, and furniture, ever exhaust their husbands.

2. Yet a leech sucks a man's blood alone, and *so far* is *more* respectful; but the other draws wealth, gain, flesh, seminal juices, strength, and pleasure.

3. In infancy she is timid, in youth confident; but in age a woman shows *outward* respect to her husband, as *if he were* a king.

4. Left to the guidance of her own will, and unrestrained by affection, she afterwards becomes ungovernable, as a neglected disease *becomes incurable.*

"Her own will:" her own desires. "Ungovernable;" highly mischievous.

The *Retnácara.*

Though won by ornaments, apparel and furniture, she exhausts her husband, as a leech sucks the human body. Therefore, as a leech, steadily adhering to the body of a man, sucks and drinks his best blood, so do women act. He adds to the illustration: since a leech sucks the blood alone, it is respectful in comparison with women; but these draw wealth, and the rest of six things mentioned.

In infancy she is fearful; in youth she asserts equality; in age she respects her husband no more than grass, for *his* youth is past. On the other reading (*nripa vat* like a king, instead of *trina vat* like grass,) the sense is this; that she herself may be esteemed even without youth *to render her amiable,* she honours her husband, like a king, with affected respect.

Conducting herself according to her own will, and unrestrained by the apprehension of violating affection, a woman deviates from the path of duty, (she follows not that which is ordained to be the path of virtue;) as a disease, such as a fever or the like, suffered to remain in the body, and, through tenderness, unopposed by a cooling regimen, becomes incurable through the want of medicaments.

* Chap. IX. v. 20.

XXVIII.

The *Rámáyana*:—To women, not any man is *solely* dear, nor is any one hateful; they embrace every man, as a creeper, growing in the forest, *clings to every tree within its reach.*

Therefore, it should not be trusted that there is no apprehension of a woman's desiring some man who is *apparently* hateful to her. She must be guarded from all.

XXIX.

The *Mahábhárata*:—Women, though born in noble families, *themselves* beauteous, and married *to worthy husbands,* remain not within the bounds of duty; this, NÁREDA, is the fault of women:

2. From the want of a motive *for deviation,* or through fear of the people or of their kindred, unbridled women may remain within the bounds of duty, *faithful* to their husbands;

3. But neither through fear *of moral law,* nor through severe reprehension, nor from any motive of *regard for* wealth, nor on account of their connexion with kindred and family, are women constant to their husbands.

4. Matrons envy women who live by prostitution, the *bloom of* youth they possess, and the food and apparel they receive.

5. Though men be lame, divine Sage! or otherwise contemptible, there is not any man in this world, great Sage! insufferable to women:

6. If they have no possible access to men, *O thou inspired by* BRAHMA! they seduce each other; truly they are not constant to their husbands:

7. From not finding men, or through fear of their kindred, or apprehension of stripes or confinement, they guard themselves:

8. But fire is not satiated with wood, nor the ocean with rivers, nor death with all beings, nor woman with man.

9. This, divine Sage! is another hidden quality of all women; at the very sight of a handsome man, the heart of a woman melts with desire.

10. Women bear not much *affection to* their husbands, though giving them what they desire, doing what they wish, and protecting them from danger:

11. They do not so much value the gratification of their wishes, abundance of ornaments, or hoards *of wealth,* as they do sensual pleasures.

12. Final destiny, wind, death, the infernal regions, the fire of the ocean, the edge of a razor, poison, venemous serpents, and *devouring* fire, all united, are *no worse than* women.*

In fact, all these texts, describing the wickedness of women, only imply that confidence should not be placed in them, and show that they are sinful from their want of knowledge to distinguish what is lawful and unlawful. But, at particular times, men also follow implicitly the dictates of lust. Accordingly the *Mahábhárata* expresses, "all creatures, overcome by lust and wrath, sink, &c.;" and, at times, women are found most loyal and constant, as SÁVITRI and others.

SECT. II.—*On the Method of guarding Women.*

IF, *then,* women regard not their protectors, how can they be preserved from vice? In answer to this question, MENU declares the expedients by which they may be guarded. CHANDÉSWARA.

XXX.

MENU :—No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

2. Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and *female* duty, in the preparation of daily food, and the superintendence of household utensils.

"Household utensils;" *or it may mean female ornaments,* as bracelets, ear-rings, and the like.

No man is able *wholly* to preserve women from vice, even by forcible restraint; for still they will manifest disloyalty. But, by these means, he may restrain them. The Sage mentions those means (XXX 2): by keeping a wife employed in the accumulation and disposal of wealth, in the purification of effects and of *her own* person, in the care of the *sacrificial* fire and the like, in the preparation of food, and in the superintendence of household utensils, as beds, seats, jars, earthen vessels, and the like.

CULLÚCABHATTA.

Others explain "purification and *female* duty," sweeping the house and cleaning the vessels used at meals and the like. "Preparation of food;" and the presenting of it, and so forth. Occupied in such offices, their minds are calm; hence, and from want of leisure, every wish for commerce with other men is prevented. This artifice MENU declares to be an expedient for restraining women.

XXXI.

VRĬHASPATI :—The keeping women employed in the receipt and expenditure of wealth, in the preparation of food, in the superintendence

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* I think it unnecessary to subjoin the comments to these texts, on which it is unpleasant to dwell: the subsequent remark does away the literal application, as the texts quoted in the next section (particularly v. XCIV) do away the universal censure.

of the household utensils, in purification, and in the care of the *perpetual* fire, is declared to be the mode of restraining women.

"In purification;" or in the business of cleanliness, as sweeping the house and the like. "In the care of the fire;" in keeping it for the daily oblations of those who maintain a perpetual fire.

XXXII.

MENU:—By confinement at home, even under affectionate and observant guardians, they are not secure; but those women are truly secure, who are guarded by their own good inclinations.

Guardians, who are both affectionate and observant. The *Retnácara.*

Though confined at home, even under persons who are both affectionate and authoritative, those women are not secure, who, from their evil disposition, guard not themselves; but they who, excelling in virtue, guard themselves, are truly secure. Therefore a rule *of conduct* should be prescribed to them by announcing the attainment of heaven through the practice of virtue, and punishment in hell for habits of vice. This is declared to be the chief expedient for restraining women. CULLÚCABHATTA.

XXXIII.

MENU:—Whatever be the qualities of the man with whom a woman is united by lawful marriage, such qualities even she assumes; like a river *united* with the sea.

2. ACSHAMÁLÁ, a woman of the lowest birth, being thus united to VASISHT'HA, and 'SÁRANGÌ, being united to MANDAPÁLA, were entitled to very high honour:

3. These, and other females of low birth, have attained eminence in this world by the respective good qualities of their lords.

A woman, though *naturally* sinful, imbibes virtue from her intercourse with a husband who gives the example of it, and she becomes deserving of respect; but a woman, even though naturally virtuous, becomes vicious by intercourse with a vicious man. He illustrates this by a comparison; as sweet water, falling into the ocean of salt water, becomes salt, or falling into the ocean of milk, *becomes milk,* and so forth. ACSHAMÁLÁ (XXXIII. 2) was the name of a certain woman married to VASISHT'HA; and 'SÁRANGÌ was a female bird, married to a Sage named MANDAPÁLA.

"These, and other females;" *in the plural number instead of the dual:* on this CULLÚCABHATTA observes, that, although two only are here celebrated, "these" is expressed in the plural number, because those two are only intended as instances. Others think, it is expressed in the plural to convey the sense of "and the rest;" the meaning therefore is, "these two and the rest, as well as other females."

XXXIV.

MENU:—Thus has the law, ever pure, been propounded for the civil conduct of men and women: hear next the laws concerning children,

by obedience to which may happiness be attained in this and the future life.

"Civil conduct of men and women;" the protection to be given by a man to a woman: or the conduct to be observed in this world; that is, the protection afforded by men to women. Happiness may be attained after death, since heaven is attained; and in this life, by the *very* preservation *of a wife*, and so forth.

If women be naturally vicious, and be guarded with *such* difficulty, should not marriage be avoided? To obviate this doubt, he declares the production of children to be the motive of marriage.

XXXV.

MENU:—When good women, united with husbands in expectation of progeny, eminently fortunate and worthy of reverence, irradiate the houses of their lords, between them and goddesses of abundance there is no diversity whatever.

2. The production of children, the nurture of them when produced, and the daily superintendence of domestic affairs, are peculiar to the wife.

3. From the wife alone proceed offspring, good household management, solicitous attention, most exquisite caresses, and that heavenly beatitude which she obtains for the manes of ancestors, and for *the husband* himself.

Although their defects have been declared for the sake of *showing the necessity of* their being guarded; yet, as a remedy is possible, these women, married for the sake of producing children (who are greatly beneficial *to their parents)*, become the cause of their husband's partaking of eminent prosperity, are entitled to reverence shown by gifts of apparel, ornaments and the like, and render their own houses pure. In such houses, women and goddesses of abundance are equal; there is no diversity whatever: as a house, unvisited by the goddess of abundance, does not flourish; so a house, deprived of women, thrives not. CULLÚCABHATTA.

"Goddess of abundance;" the term may signify either beauty, or the goddess LACSHMÌ. The production of children, and the purification of the house, are not the only purposes of marriage: the Sage mentions others (XXXV 2).

The construction is this; "the daily business of civil conduct is peculiar to women." The *Retnácara*.

The production of children, the nurture of them when born, and the daily superintendence of worldly affairs, (such as the entertainment of guests, kinsmen and friends,) are peculiar to women. CULLÚCABHATTA.

The Sage enumerates the several qualities of women, both those already noticed, and those which had not been mentioned (XXXV 3).

The production of children, though already mentioned, is repeated, to show that women are worthy of reverence; *that*, and offices in which religious duty is concerned; (as the care of the perpetual fire and the like,)

solicitous attention, (*personal* attendance,) exquisite caresses, and heaven obtained for his ancestors and himself by the production of children; all these proceed from the wife. CULLÚCABHATTA.

But we thus explain the text; offspring, the nurture of children, and exquisite caresses, *proceed from the wife;* as mentioned in the *Cálicá purána.* "The wife affords delight and male offspring."

From her proceeds heavenly beatitude, obtained through the rites to be performed in the order of a householder; there is not, consequently, any needless repetition. Thus a text of law, quoted in the *Udváha tatwa*, expresses:—"The wife call not the habitation *alone* the home, *for* the wife is described by that name (*griha*); with her, indeed, a man attains all the purposes of human life."

And another text, inserted in the same compilation, declares incapable of sacrifice, a man who has no wife, and has not passed the age of forty-eight years:

"Until he have attained the age of forty-eight years, a man who has neither son nor wife is disqualified for performing the sacrifice."

XXXVI.

YÁJNYAWALCYA:—Perpetuated offspring and a heavenly abode are obtained through a son, a grandson, and a great-grandson; therefore should virtuous wives be respected, cherished, and well guarded.

XXXVII.

The *Mahábhárata:*—These women, *graced* with the name of goddesses of abundance, should be treated with honour by him who desires wealth: BHARATA! a lovely woman, restrained from vice, is a goddess of abundance.

MENU declares them "worthy of reverence;" the *Mahábhárata* declares, they "should be treated with honour;" and subjoins a motive for treating them with reverence:

XXXVIII.

The *Mahábhárata:*—Where females are honoured, there the deities are pleased; but where they are unhonoured, there all religious acts become fruitless.

2. When female relations are made miserable, even then is that family annihilated; *for*, the houses on which they pronounce a curse *perish*, as if destroyed by a deadly sacrifice:

3. *Those houses*, king of the earth! neither flourish nor increase, which are not graced by the goddess of abundance.

"Female relation;" sisters, and women of a family. AMERA.

The meaning is, that houses on which female relations pronounce a curse, (on which they pronounce an imprecation in consequence of suffering from the want of a suitable maintenance and the like,) are extirpated.

XXXIX.

MENU :—Where females are honoured, there the deities are pleased; but where they are dishonoured, there all religious acts become fruitless.

2. Where female relations are made miserable, the family of him who makes them so very soon wholly perishes; but where they are not unhappy, the family always increases.

3. On whatever houses the women of a family, not being duly honoured, pronounce an imprecation, those houses, with all that belong to them, utterly perish, as if destroyed by a sacrifice for the death of an enemy.

4. Let those women, therefore, be continually supplied with ornaments, apparel, and food, at festivals and at jubilees, by men desirous of wealth.

"Female relations;" the women of a family, as sister, son's or nephew's wife, and the rest. The *Retnácara.*

"Are made miserable;" are made wretched, from the want of maintenance or the like. "Perish, as if destroyed by a sacrifice;" by a fire *lighted for a sacrifice to be made* for the death of an enemy: a rhetorical simile.

XL.

MENU :—In whatever family the husband is contented with his wife, and the wife with her husband, in that house will fortune be assuredly permanent.*

XLI.

The *Mahábhárata* :—*Women* must be honoured and adorned by their own fathers and brethren, and by the fathers and brethren of their husbands, if they seek abundant prosperity.

XLII.

MENU :—*Married women* must be honoured and adorned by their fathers and brethren, by their husbands, and by the brethren of their husbands, if they seek abundant prosperity.

XLIII.

YÁJNYAWALCYA :—Females must be honoured by their husbands, brothers, fathers, and paternal kinsmen; by the fathers, mothers, and brethren of their husbands; and by *all* kinsmen; with *gifts of* ornaments, apparel, and food.

Gifts of ornaments and the rest, as *tokens of* reverence. The *Dípacalicá.*

* Cited again at v. CLXXXIX, 1.

To the virtuous women, already described, must reverence be shown by their husbands and the rest, with ornaments, apparel, food, blossoms, and the like, to the utmost of their power, that, being honoured, they may advance the virtue, wealth, and pleasures *of their kindred*. The *Mitácshará.*

"Blossoms;" to be placed in the tresses of their hair.

In the third chapter of his work, on the subject of an Embryo in the third month of pregnancy, YÁJNYAWALCYA has the following text:—

XLIV.

YÁJNYAWALCYA:—By not gratifying the longings *of a pregnant woman*, the embryo suffers injury, becomes deformed, or even perishes; therefore should women be treated with affection.

From what has been stated, it appears that reverence must necessarily be shown to a wife, sister, and the rest, by gifts of food and clothes, and of ornaments, bestowed according to his ability by her husband, her brother, or some wealthy relation, as the case may be: this is a settled rule. If it be not done, the omission is punished with misfortune, for texts show that the family perishes: therefore women shall not, *in such cases*, apply to the king; but he being privately informed, must compel their relations to supply them with food and the like; and the rule must be settled as in the supplementary chapter *of the code of law*.

XLV.

MENU:—Should a man have business abroad, let him assure a fit maintenance to his wife, and then reside *for a time* in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence:

2. While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave no support, let her subsist by *spinning and other* blameless arts.*

But if her husband go to a distant abode without providing for her subsistence, clothing, and the like, let the woman live by spinning and other blameless arts. CULLÚCABHATTA.

XLVI.

MENU:—When twice-born men take wives, both of their own class and others, the precedence, honour, and habitation of those wives must be settled solely according to the order of their classes.

When twice-born men marry wives, both of their own class and of other tribes, then the precedence in regard to respectful language and superior share of the heritage, honour shown by gifts of apparel, ornaments and the like, and habitation or preferable apartment of those wives, must be settled according to the order of the classes. CULLÚCABHATTA.

Others hold the precedence to be that which is announced in the subsequent text; namely, the duties of the eldest wife, personal attendance, and the like.

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* See v. CXVI.

XLVII.

Menu:—To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion.

Attendance on the person of her husband (as presenting food to him and the like), business relating to acts of religion (as the distribution of alms and the like, the entertainment of guests, and the care of the sacrificial utensils), and other daily business, the wives of the same class only must perform for twice-born men; not wives of a different class by any means.

CULLÚCBHATTA.

Disputes between his wives must be thus reconciled by the husband: and this supposes that he has a wife of the same class with himself.

XLVIII.

Yájnyawalcya:—If he have a wife of equal class, let him not employ another in business relating to acts of religion; *but* if there be several wives of his own class, such duties are lawfully performed by no other than the eldest.

If there be a wife of equal class, he shall not employ another in business relating to religious duty; but if there be several wives of his own class, then he shall not employ any other than the eldest of them *in such offices*: hence, if the first married wife be alive, she must be preferred in all matters relating to acts of religion. CHANDÉSWARA and VIJNYÁNÉSWARA.

If a wife of equal class be alive, he shall not employ one of unequal class in the care of the sacrificial fire and the like; if there be several wives of his own class, he must so employ the eldest alone. Another case is mentioned in the *Ch'handóga perišishta* (L 3).* SÚLAPANI.

Some remark, that two or three cases might be established, if the youngest wives be pre-eminent in virtue, or if several were married at the same time.† But the uncertainty as to the rule to be followed *in such cases*, is not liable to any objection: for the text only directs honour to be shown as enjoined; and the rest is mentioned in another place.

XLIX.

Vishnu:—If many wives of his own class be living, with the eldest alone should the husband conduct business relating to acts of religion, even though his younger wives be dearer to him; but if there be no wife of equal class, the business may, in a case of distress, be

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* The text is cited anonymously at full length; but differing from another text in one word only, and that not affecting the sense. I refer the citation to that other text, subsequently quoted from CÁTYÁYANA. T.

† By eldest wife is meant, not the eldest woman, but the wife first married; and after her death, the next married has not a right exactly to the same precedence, because she is not the wife married *from a sense of duty*: this will be evident in the sequel. T.

executed by that wife only who is of the class next below him: yet let not a twice-born man ever *perform holy rites* with *the aid of* a *'Súdrá* wife.

If there be no wife equal in class, the business relating to acts of religion may be accomplished by her who belongs to the class next below him. This is also intimated by MENU; "the precedence must be settled according to the order of the classes" (XLVI). "But let not a twice-born man ever perform holy rites with the aid of a *'Súdrá* wife:" this denotes, *that he may not do so*, even though he have no wife of any other class but that of the *'Súdrá;* else the terms of the text would be unmeaning. To fulfil their duty, twice-born men should marry women of twice-born classes: and, from the expression "the business may in a case of distress be executed by a wife of the class next below him," and from that which immediately follows "but let not a twice-born man ever &c." it is deduced, that a *Bráhmana*, in the utmost distress, may even employ a wife of the commercial class in such offices. Thus some expound the law.

L.

CÁTYÁYANA, quoted in the *Ch'handóga perisishta:*—Let him who has many wives employ one of equal class in the care of the sacrificial fire, and in attendance on himself; but if there be many such, let him employ the eldest in those duties, provided she be blameless:

2. Or he may employ in such offices any one of them who is mother of an eminent son, who is obedient to his commands, affectionate, capable of good management, kind in discourse, and well disposed:

3. Or without partiality, he may perform the rites *of religion* with all his wives successively, in periods settled according to *their respective* precedence, or settled of his own authority to the best of his knowledge.

4. We know that the precedence of women originates in fortunate destiny; nor can a husband, by a slight show of reverence, content wives of twice-born classes:

5. That woman gains a fortunate destiny, who, constantly obsequious to her husband, worships BHAVÁNÍ in this world with many acts of austerity, and reverently attends the sacrificial fire.

If there be many of them, and the eldest wife be blameless, he must employ her in matters relating to acts of religion: but if the eldest wife be blameable, then, since there is no certainty *which should be employed* among several wives equal in class, it should be determined by the second rule (L 2). The *Retnácara.*

"Mother of an eminent son;" one who has borne a blameless son. If the eldest of all the wives be censurable, and the rest be equal *in merit*, they should, according to circumstances, be employed in such duties in daily succession: this some think to be fully intended in the *Retnácara.*

He who has wives both of his own class and of others, should assign to the wife of equal class the care of the *sacrificial* fire, the hospitable enter-

tainment of strangers, and attendance on himself; but if there be many of his own class, to the eldest wife, provided she be not disabled by sickness, nor chargeable with a vicious disposition or the like. On another reading (*agni śishtyádi susrúshám*, instead of *agni śishtátma susrúshám*, care of the *sacrificial* fire, and attendance on himself,) the sense is, attention to his commands in respect of supplying the fire and the like, and other attendance on her husband.

Or he may constantly employ, in the care of the sacrificial fire and other offices relating to acts of religion, and in attendance on his own person, that wife among those of equal class who is mother of a son; *or*, avoiding partiality, he may perform the daily rites *of religion* with the assistance of his wives in regular succession, allowing five days and so forth to each according to their respective precedence, or distributing periods of his own authority and to the best of his knowledge. The precedence of women depends on their fortunate destiny: hence the precept for employing the eldest wife in *personal* attendance supposes her eminently fortunate; and that fortunate destiny has been obtained by obedience to her husband, by many austerities, by worship of BHAVÁNÌ, and by attention to the sacrificial fire, in a former existence. Therefore a woman, though eminently fortunate in her present existence, should pay adoration to BHAVÁNÌ and so forth, for the sake of auspicious fortune in a future birth. This states the conduct incumbent on women; the preceding texts (L 1, 2 & 3) had stated the conduct incumbent on the husband. The *Periśishta Pracaśa.*

"Precedence originates in fortunate destiny:" this supposes superiority in virtue, since that is expressed in the last verse. The woman of equal class is superior to all the rest; for the approbation of the law prevails over the affection of the husband. "Not by slight show of reverence, &c:" thus, since what is executed by an auspicious wife is best executed, she is best qualified for offices pertaining to acts of religion. Thus others expound the law.

LI.

DACSHA:—The first is the wife married from a sense of duty: the second promotes sensual gratification; sensible, not moral effects proceed from her.

2. The first wife is called the wife whom acts of duty concern, provided she be faultless; but if she be faulty, there is no offence in employing another wife endued with excellent qualities.

"The wife whom acts of duty concern;" who officiates in acts of religion, and so forth. From the second wife proceed sensible effects, (subject to the test of sensation, as the present gratification of caresses and the like;) not moral effects, or the last solemn rites and the rest of the acts relating to another world and so forth. But moral consequences follow the production of a son; that, however, in a successive order, *by the birth of a son from the second wife, if the eldest wife be childless.* From this text it appears, that the seniority noticed in former texts (XLVIII and XLIX) is settled, not according to age, but according to the priority of nuptials. This is the principal case: he mentions a secondary one (LI 2); if the eldest wife be faulty, there is no offence in employing another on business relating to acts of religion; therefore another wife, endued with excellent qualities, should be employed.

The wife described in the *Ch'handóga perisishta* (L 2) should be considered as the wife endued with excellent qualities; if there be no such grounds for selection, it may be settled as directed in the *Ch'handóga perisishta* (L 3). Since the *Ch'handóga perisishtà** completes the extracts of the *Sáma-véda*, the adjustment by successive daily periods should be admitted without question by *all* followers of the *Sáma-véda;* for, were it questioned *by any person,* it must be admitted, even though directed by another *than the particular* 'Sác'há, *by which that person is governed.* For it is said, "what is enjoined in their own *Sác'hás*, or declared by another, but not inconsistent with their own, should be followed by the wife, as the practice of maintaining a perpetual fire and the like."

LII.

MENU and VISHNU, after mentioning a '*Súdrá* wife:—His sacrifices to the gods, his oblations to the manes, and his hospitable attentions to strangers, must be supplied principally by her: but the gods and manes will not eat such offerings; nor can heaven be attained by such hospitality.

Of him whose sacrifices to the gods, whose oblations to the manes, whose hospitable attentions to strangers, are supplied by a wife of the servile class, the gods and manes will not eat the offerings; nor does he attain heaven. The *Retnácara.*

Since the gods and manes eat not his offerings, he does not attain heaven; and his daily rites are unfulfilled. Although guests eat the food with a corporeal mouth, still the duty of hospitable attention is not thereby truly fulfilled: consequently he attains not heaven. If any person, through ignorance, follow a path repugnant to these rules, the king, anyhow informed of it, should investigate the matter and restrain him. This construction must be admitted; else the text (XLVI), and others on the same subject, are uselessly placed under the title of Judicial Procedure, in the institutes of MENU.

LIII.

DACSHA:—Dwelling in a house, *as a householder* is *practised* for the sake of happiness, and that happiness depends principally on the wife; she is *indeed* a wife, who is attentive to precept, obedient to command.

2. And obsequious *to her lord;* who never speaks unkindly; who is careful in household management, virtuous, and prolific: a woman, endued with such qualities, is no doubt a goddess of abundance.

3. She whose temper is cheerful, who is ever attentive to her place, respectful and affectionate to her husband, is *truly* a wife; any other is useless.

"For the sake of happiness;" since happiness may be attained in another order besides those of devotion. "Who never speaks unkindly;"

* The meaning of the name is "consummation, or completion, of the followers of the *Sáma-véda.*" T.

who avoids harsh language. "Her place;" her habitation, bed, seat, and the like. "Respectful;" reverent. This details the qualities intended by the expression "endued with excellent qualities."

LIV.

VYÁSA:—Let the wife of a virtuous man rise before him, be diligent in household management, repose on an humbler bed and seat, avoid unkind discourse, and pursue his benefit.

After the husband and wife have slept through the night, let her rise first, at dawn of day; let her not require an equal bed and seat; and let her perform that by which her husband may be benefited.

LV.

DACSHA:—With sorrow does he eat who has two contentious wives; dissention, mutual enmity, meanness and pain *distract his mind.*

But, although he have two wives, if they be complacent, his food is tasted with pleasure; no strife or contention exists; no mutual enmity; no endurance of pain; no sorrow.

LVI.

MENU:—For a whole year let a husband bear with his wife, who treats him with aversion; but after a year, let him deprive her of her separate property, and cease to cohabit with her.

With his wife, who has contracted a dislike of her husband, let him be patient for a whole year; but, after that period, taking back from his wife, who treats him with aversion, the ornaments and other property given by himself, let him cease to approach her: but mere food and clothes must be allowed to her. CULLÚCABHATTA.

That her hatred should be endured for a whole year, is approved; within that period, a husband, proposing to forsake her, should be prevented, by the interposition of friends, and by other means of conciliation: but, after a year, there is no offence in his forsaking her.

LVII.

MENU:—She who neglects her lord, though addicted to gaming, fond of spirituous liquors, or diseased, must be deserted for three months, and deprived of her ornaments and household furniture:

2. But she who is averse from a mad husband, or a deadly sinner, or an eunuch, or one without manly strength, or one afflicted with such maladies as punish crimes, must neither be deserted nor stripped of her property.

That woman who, omitting due attention and the like, neglects a husband addicted to gaming and similar vices, fond of inebriating liquors, or diseased, must be unapproached for three months, and deprived of her ornaments, her bed, and other furniture. CULLÚCABHATTA.

Here one addicted to intoxication, but not degraded, is meant. As her neglect of a depraved husband is a slight offence, the punishment is small; but if she repeatedly neglect him, it is proper that she should be repeatedly forsaken.

But she who attends not a husband, whose mind is alienated by the effect of air or other constitutional element, or a deadly sinner (as described in the eleventh chapter), or unmanned, or destitute of manly strength (from an obstruction of the seminal juices or the like), or degraded, because he is afflicted with leprosy or a similar disease, must not be deserted, nor deprived of her property. CULLÚCABHATTA.

"As described in the eleventh chapter;" for there crimes in the first degree and so forth are mentioned.*

"One without manly strength;" impotent, though apparently possessing manhood. "Aversion from a husband;" want of diligent attention, not absolute desertion; for a text declares,

LVIII.

A husband, who is not an outcast, should not be forsaken by women desirous of happiness in another world.

And it is *thus* shown, that a husband who is not degraded may not be forsaken.

LIX.

NÁREDA:—A husband who abandons an affectionate wife, or her who speaks not harshly, who is sensible, constant, and fruitful, shall be brought to his duty by the king with a severe chastisement.

A husband deserting a wife endued with excellent qualities, to connect himself with another wife and so forth, incurs a severe chastisement; that is, the punishment of a thief: for, on the subject of the punishment of robbery,

LX.

VISHNU *says*:—The man who deserts a faultless wife, *shall suffer the same punishment.*

LXI.

DÉVALA:—No atonement is ordained for that man who forsakes his own wife, through delusion of mind, deserting *her* illegally; nor for him who forsakes a virtuous son.

"Deserting illegally;" abandoning *her* contrary to law.
The *Retnácara.*

"Deserting illegally" is an epithet of the preceding term; thus the sense is, "that man who abandons his wife illegally, or forsakes a virtuous son."

LXII.

DÉVALA:—A man may exclude from his bed, or from pilgrimage *(for the term is explained in both senses)*, a wife who is afflicted with leprosy, degraded from her class, barren, or insane, whose courses

* Chap. XI, v. 55, &c.

are stopped, or who is wicked; but *he may* not *exclude her* from all business.

"From his bed;" according to the *Retnácara*. Others expound it "from pilgrimage," but in a general sense, comprehending caresses and the like.

"*Not* from *all* business;" not from business of which she is capable. ŚÚLÁPANI.

Women afflicted with leprosy, and the rest, are excluded from sexual intercourse: commerce with their husbands is forbidden; but they are not universally excluded from all business. However, women degraded from their class, and the rest, are also rejected in matters pertaining to acts of religion. Of these women, she who is afflicted with leprosy is debarred from commerce with her husband, because intercourse is improper; she who is degraded, lest a taint of sin be contracted from her; she who is barren, because it would be vain; she who is insane, because the text forbids it, or because she is considered as tainted with sin; she whose courses are stopped, because *the probability of* conception may be questioned; and she who is wicked, because she is an object of aversion.

LXIII.

NÁREDA:—It is a crime in them both, if they desert each other, or if they persist in mutual altercation, except in the case of adultery by a guarded wife.

2. Let a man banish from his house a wife who embezzles all *his* wealth under pretence of female property, or who procures an abortion, or who wishes the death of her husband.

"Crime;" sin. The *Retnácara*.

Unless a wife, who is diligently guarded, be disloyal, both husband and wife, forsaking each other, are guilty of a heinous sin; but there is none in abandoning a disloyal wife. Thus some expound the text.

"Who embezzles all *his* wealth, under pretence of female property;" one by whom all property is embezzled as female property. The *Retnácara*.

That is, as her own female property.

A wife by whom all *his* wealth is falsely included in female property. The *Calpa drúma*.

"Let him banish from his house;" banishing her from the principal habitation, let him assign her a *separate* dwelling within his close. Thus some expound the law.

LXIV.

Uncertain:—Let him banish from the house a wife who constantly dissipates wealth, and who speaks unkindly, and her who eats before her husband:

2. Let him never dignify with his love a barren wife, nor her who bears only daughters, nor one who is ever contumacious; if he do, he partakes of her faults.

LXV.

MENU:—That woman, who, having bathed after her courses, refuses the approaches of her husband, let him banish, proclaiming her, in the middle of the town, guilty of infanticide.

2. And her who, through aversion from her husband, falsely pretends to have her courses, let him banish, proclaiming her, in the presence of kinsmen, guilty of infanticide.

"Aversion;" hatred. In the preceding case a motive is supposed in the want of affection, but short of hatred: thus the texts are not without a difference.

Or the last text relates to many instances of *deception in regard to* her courses; *the* first *concerns a single refusal.* The *Retnácara.*

"Proclaiming her offence;" announcing her guilty of infanticide; because she has opposed the procreation of an embryo, declaring her equally guilty with the slayer of an infant. Her refusal of going near her husband is the subject of the first text; the subject of the second is her refusal of his caresses, through hatred, though she have attended him. Such is the distinction according to other *lawyers*. On this construction, since the first case does not clearly state a motive different from hatred, the sense of the last text is included in the first; if she deceive her husband many times in regard to her menses, she has of course deceived him in one instance.

LXVI.

BAUDHÁYANA:—Prudent men forsake a wife who neglects due attendance, who is barren, or immoral, or who frequents the houses of strangers; *they* instantly *forsake* one who speaks unkindly.

2. In the tenth year a man may forsake one who bears no children; in the twelfth, one who bears daughters only; in the fifteenth, one whose children are *all* dead; but instantly one who speaks unkindly.

"Immoral;" vicious. "They instantly forsake one who speaks unkindly:" they forthwith abandon her. Thus, a man should endeavour to reclaim one who neglects due attendance and so forth; but no such endeavour is used with one who speaks unkindly. A man may forsake a barren wife in the tenth year after the period when pregnancy might have been expected; and one whose children are *all* dead, in the fifteenth year after the death of her children.

LXVII.

MENU:—A wife who drinks any spirituous liquors, who acts immorally, who shows hatred *to her lord*, who is *incurably* diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife.

A wife who is addicted to the use of any forbidden spirituous liquor, whose conduct is vicious, who is disposed to act in opposition to her husband, who is afflicted with leprosy or other *similar* disease, who is disposed to injure her husband, and who continually squanders *his wealth*, may be superseded; that is, another marriage may be contracted, though she be living. CULLÚCABHATTA.

A *second* marriage, *or one* subsequent to her's, contracted by her husband, is supersession.

LXVIII.

YÁJNYAWALCYA :—One who drinks inebriating liquors, who is *incurably* diseased, who is quarrelsome, or barren, who wastes his wealth, who speaks unkindly, who brings forth only daughters, may be superseded by another wife; and so may she who manifests hatred to her husband.

Who drinks spirituous liquors, whether she be of the servile or other class; for the prohibition is general.

LXIX.

Half his body perishes, whose wife drinks intoxicating liquors.

"Diseased" (LXVIII); infected with a lasting malady.

"Quarrelsome;" contentious. "Barren;" unprolific. "Who wastes his wealth" who dissipates his property. "Who speaks unkindly;" whose discourse is evil. "Who brings forth daughters;" who bears daughters only. "Who manifests hatred to her husband;" who acts, on every occasion, injuriously to him. The *Mitácsharà.*

"One who drinks inebriating liquors;" *meaning* the wife of a twice-born man. "Diseased;" and *therefore* incapable of household affairs. "Quarrelsome;" or wilful. Naturally "barren." "Who attempts her own life" (for the gloss substitutes *átmaghnì* for *art'haghnì*); who attempts suicide by hanging herself or otherwise. "Who speaks unkindly;" 'to her husband' must be supplied. "Who brings forth daughters;" who bears only daughters. "Who manifests hatred to a man;" who detests the son of *her husband by* another *wife*, and so forth. The *Dípacalicá.*

The text cited (LXIX) concerns a twice-born man; for those who are not degraded in consequence of drinking spirituous liquors themselves, are not degraded in consequence of their wives drinking intoxicating liquors. Such is the opinion intimated in the *Dípacalicá*. The wives of those who are not permitted to drink inebriating liquors must be forsaken, if they be addicted to the evil practice of intoxication from drinking such liquors; for they are degraded: but the desertion of all degraded women is enjoined in another text. This remark is made by other *commentators*.

LXX.

MENU :—A barren wife may be superseded by another in the eighth year; she whose children are all dead, in the tenth; she who brings forth *only* daughters, in the eleventh; she who speaks unkindly, without delay.

In the eighth year of barrenness, counted from the first season, she may be superseded; one whose children are *all* dead, in the tenth; and one who bears *only* daughters, in the eleventh: but she who speaks unkindly, without delay, provided she have no son; *for*, if she have male issue, she may not be superseded, since that is prohibited by another Sage (LXXI).

CULLÚCABHATTA.

LXXI.

If his wife be virtuous, and have borne a son, let not a man contract another marriage, unless he do so on *the* loss *of his wife or son.*

"Virtuous" here intends speaking affectionately and so forth. No inconsistency with the text of BADUHÁYANA (LXVI) can be here alleged; for he speaks of desertion, but MENU speaks of a second marriage. It must be noticed, that it appears from the text of MENU (LXX), which permits the supersession of a barren wife in the eighth year and so forth, and from the other text (LXXI), which forbids the supersession of a virtuous wife who has borne a son, that a second marriage should not be contracted without some fault on the part of the first wife. But marriages with women of the *four* classes may be contracted by an amorous man, with the consent of his first wife anyhow obtained.

VIJNYÁNÉSWARA, quoting the following text, with this remark, 'YÁJNYAWALCYA denounces *punishment* against one who supersedes *his wife* 'without just cause for supersession,' adds, 'he who forsakes, that is, supersedes such a wife, shall be compelled by the king to pay the third part of 'his property.'

LXXII.

YÁJNYAWALCYA:—He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part *of his wealth; or, if* poor, to provide a maintenance for that wife.

But the author of the *Dípacalicá* has not explained this desertion as consisting in supersession.

LXXIII.

MENU:—But she who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superseded by another wife with her own consent.

With the assent of her again, who, though afflicted with disease, is obedient to her husband, and virtuous, another marriage may be contracted; but she must never be disgraced. CULLÚCABHATTA.

"Afflicted with illness" is not to be taken in a large sense, comprehending accidental barrenness and the like; for progeny is declared necessary. This is remarked by other *lawyers.*

LXXIV.

YÁJNYAWALCYA:—But a superseded wife must be maintained; else a great offence is committed.

Though superseded by another wife, she must be treated with courtesy, and receive gifts and respect as before; else, (that is, if she be not maintained,) a heinous sin is committed, and a fine is incurred, as will be mentioned. VIJNYÁNÉSWARA.

But no reverence, say others, is due to a degraded woman.

"A fine, as will be mentioned;" alluding to the forfeiture of a third part of his property (LXXII). It should be here noticed, that a woman

addicted to inebriating liquors (LXVIII) comprehends, in a general sense, any woman liable to abandonment, as declared by other Sages.

LXXV.

MENU:—If a wife, legally superseded, shall depart in wrath from the house, she must either instantly be confined, or abandoned in the presence of the whole family.

That wife again, who, being superseded, departs in wrath from the house, should be instantly chastised with a rope or the like, and compelled to stay; or, if her resentment cannot be repressed, she must be abandoned in the presence of her father and the rest of her family. CULLÚCABHATTA.

This abandoning of her in the presence of her family is a repudiation proclaimed to all, in this form, "she is now rejected by me;" and afterwards, offences committed by that woman do not affect the man.

LXXVI.

VAŚISHT'HA:—From connubial intercourse, from pilgrimage, from what pertains to acts of religion, these four should be rejected, *namely*, one who yields herself to her husband's pupil, or to his spiritual parent;

2. And especially one who attempts the life of her lord, or who converses with the vilest *of men*.

"Vile;" despicable, as a *Chándála* or the like. The *Retnácara*.

"Vile;" abject, begotten in the inverse order of the classes. The *Dípacalicá*.

Others add, that "rejection" means exclusion from connubial intercourse and the rest.

LXXVII.

YÁJNYAWALCYA:—From disloyalty *in thought* a woman is purified by her courses; but, in case of conception *by unlawful commerce*, desertion is enjoined by the law; and so in the case of her destroying an embryo, or slaying her husband, or committing any sin in the first degree.

Since a text of MENU expresses, that a woman, whose thoughts have been unchaste, is purified by her monthly discharge,* this purification by her courses concerns mental disloyalty: but if she have conceived by a man of low class, she must be forsaken; of course expiation is suggested in case of disloyalty in mind or body, provided she do not conceive. If she destroy an embryo, slay her husband, or commit any sin in the first degree, she must be forsaken. 'SÚLAPÁNI.

VIJNYÁNÉŚWARA concurs in that exposition; but explains "in case of conception," in case of pregnancy by commerce with a man of the servile class; and quotes the following text of law:—

* Chapter V, v. CVIII.

LXXVIII.

Wives of *Bráhmanas*, *Cshatriyas*, and *Vaisyas*, approached by a man of the servile class, are purified by penance, provided they bring forth no children *by such commerce;* and not otherwise.

LXXIX.

HÁRÍTA:—A man should avoid her who has destroyed an embryo, has criminally conversed with a man of low class, with a pupil, or with a son, is addicted to drinking or to brawls, or wastes property or *stores of* grain.

LXXX.

MENU:—That a woman who follows her own will should be forsaken, is ordained by the law; but let not a man slay his wife, nor mutilate her person:

2. VIVASWAT* declared, that a woman wilfully disloyal should be forsaken, not slain nor disfigured; a man should avoid the slaughter of women.

He declared, that she should not be slain, nor disfigured.

The *Retnácara.*

LXXXI.

NÁREDA:—If a woman be disloyal, ignominious tonsure, the lowest bed, the meanest food, the worst habitation, and the task of removing filth, constitute her punishment.

LXXXII.

YÁJNYAWALCYA:—Let a man keep a disloyal wife deprived of her rights, squalid, maintained on a ball of grain alone, subdued, and *only* suffered to repose on the meanest bed.

On this CHANDÉSWARA remarks, that 'rejection and other penalties are denounced against disloyal wives, according as the offence is heinous or venial: the rule of decision must depend on the several distinctions of disloyalty.' Meaning wilful and casual disloyalty, and other distinctions. But VIJNYÁNÉSWARA says, she who is disloyal should be kept by her husband in her own house, "deprived of her rights," that is, divested of her right to maintenance, to jewels and the like; "squalid," or destitute of collyrium, perfumed unguents, apparel, and ornaments; "subdued," by restricting her food to the mere sustenance of life, and by other expedients; and only suffered to repose on the meanest bed, or on the bare ground: *let him so treat her*, for the sake of inducing repentance, not for the sake of atonement; since penance is separately mentioned.

MENU:—A wife, excessively corrupt, let her husband confine to one apartment, and compel her to perform the penance ordained for a man who has committed adultery.†

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* Title of SÚRYA.

† The last hemistich only was inserted; I cite the whole verse, as the quotation would not otherwise be intelligible. T.

Sleeping on the bare ground and so forth is her punishment, according to other lawyers:

To prevent the repetition of disloyalty, let him confine her in her own apartment, allowing her a ball of rice *only* for her sustenance. ŚÚLAPÁNI.

LXXXIII.

VRĬHASPATI:—A wife who is disloyal, *though* maintained and guarded, let a man keep in his house, squalid in her person, suffered only to repose on the lowest bed, and maintained on a ball of grain alone:

2. But she who has *criminally* conversed with a man of low class, may legally be forsaken, or *even* put to death.

Some remark, that the prohibition of putting a wife to death (LXXX) does not extend to the case of adultery with a man of low class.

LXXXIV.

Smrĭti, quoted in the *Mitácsharà*:—He who refuses to approach his wife, when she has bathed after her courses, doubtless sinks to the region of horror, where the slayers of priests are tortured.

LXXXV.

YÁJNYAWALCYA:—SÓMA gave them fairness; a *Gand'harva* endowed them with a charming voice; and the regent of fire, with universal purity: hence women are truly pure.

Therefore, in respect of universal contact, embraces, and the like, women are considered as pure and undefiled. VIJNYÁNÉSWARA.

A man, therefore, must necessarily approach an unoffending wife at the prescribed season, else he would be criminal, and his wife would not be guarded. All this must be maintained by the king.

CHAP. II.

ON THE DUTIES OF A WIFE.

SECT. I.—*On the Conduct enjoined to Women, whose Protectors are present.*

LXXXVI.

MENU:—By a girl, or by a young woman, or by a woman advanced in years, nothing must be done, even in her own dwelling-place, according to her mere pleasure:

2. In childhood must a female be dependent on her father; in youth, on her husband; her lord being dead, on her son; *if she have no sons, on the near kinsmen of her husband; if he left no kinsmen, on those of her father; if she have no paternal kinsmen, on the sovereign:* a woman must never seek independence.

3. Never let her wish to separate herself from her father, her husband, or her sons; for, by a separation from them, she exposes both families to contempt.

Thus, if she receive the caresses of any man but her husband, in consequence of her separation from these protectors, both families are dishonoured.

LXXXVII.

YÁJNYAWALCYA:—Careful of the domestic furniture, diligent in the management of the household affairs, cheerful, avoiding expense, let her show reverence to her husband's parents, obsequiously honouring her lord.

Carefully repositing in their places the domestic furniture, or seats and utensils employed in the house: as the pestle, mortar, and winnowing basket, and the like, in the place where grain is husked, and the grinding stone and pebble together in the place where things are ground, and so forth. The *Mitácshará.*

SÚLAPÁNI *also explains the same term* 'repositing the *household* utensils.'

LXXXVIII.

Smriti, quoted in the *Retnácara*:—An affectionate well-wisher to her lord, strict in her conduct, keeping her senses in subjection, she acquires renown in this world, and, after her death, the highest abode.

Entertaining good wishes, founded on affection.—SÚLAPÁNI.

"Affection;" exclusive mental regard, and wishing that which is best in a moment of distress. VIJNYÁNÉSWARA.

LXXXIX.

MENU:—She must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses.

XC.

VRĬHASPATI:—Rising early, reverence to venerable persons, preparation of food and condiments, the lowest seat and bed: such is declared to be the proper conduct of women.

"Preparation of food and condiments;" the dressing of victuals and the like.

XCI.

DÉVALA:—Dependence, attendance on her husband, aid in his religious ceremonies, respectful behaviour to those who are entitled to veneration from him, hatred to those who bear enmity to him; no ill will towards him, constant complacency, attention to his business, are the duties of women.

"Aid in his religious ceremonies;" attendance on her lord when the sacrificial fire is supplied, when offerings are made, and so forth. Respectful behaviour to his father and others entitled to veneration and respect from him. "Hatred to those who bear enmity to him;" *for* no benefit should be conferred by a woman on those who injure her husband, even though they sooth her with praise. "No ill will towards him;" no thoughts injurious to her husband. "Attention to his business;" industry in business which concerns her husband.

XCII.

VISHNU, after premising "duties of women:"—Accompanying of her husband, reverence of his father, of spiritual parents, of deities and guests, great cleanliness in regard to the domestic furniture, and care of the household vessels; avoiding the use of philters and charms, attention to auspicious customs, austerities after the death of her husband, no frequenting of strange houses, no standing at the door or window, dependence in all affairs, subjection to her father,

husband, and son, in childhood, youth, and age: *such are the duties of a woman.*

"Accompanying of her husband;" going wherever her husband goes, but to no place unauthorized by him; or it may be read, attending him at his religious ceremonies. "Use of philters and charms;" subduing by incantations and drugs. "Standing at the door and window," to gaze at her husband's countenance: or "not standing at the door and window," lest her husband should entertain suspicions of her holding commerce with other men.

XCIII.

The *Mahábhárata*:—Should her husband discover a woman to be wholly addicted to charms and philters, let him shun her as he would a serpent which had crept into his house.

XCIV.

Speech of the goddess of abundance to the goddess of the earth, quoted in the *Retnácara*:*—"With women ever pure and adorned, faithful to their lords, speaking kindly, not lavish, blessed with progeny, careful of the household goods, attentive to religious worship;

2. "Whose houses are neat, whose senses are subdued, who avoid strife, who are not avaricious, who respect their duty, who are endued with tenderness, I am ever present, O thou supporter of worlds!"

"Attentive to religious worship;" attentive to the business of providing oblations for the worship of deities and for other sacraments. "Who avoid strife," or contention. "Who are not avaricious;" who are not covetous.

XCV.

SANC'HA and LIC'HITA:—For every succeeding day let the wife clean the vessels used at meals; let her sweep the dwelling-house and gate, and, when clean, preserve it so; let her provide curds, rice, *durva* grass, new leaves, and blossoms, for oblations; let her reverently salute her husband's parents, and afterwards perform the necessary business of the household: let her eat nothing before the gods and guests are satisfied, nor before her husband *has eaten*, except drugs *swallowed* medicinally.

"For every succeeding day; for each coming day. The construction of the sentence is this: let her eat nothing, before her husband *has eaten*, except drugs *swallowed* medicinally; but as a remedy for any distemper, she may swallow drugs, even before her husband *has eaten*. The *Retnácara*.

"Let her sweep the dwelling-house and gate;" let her clean the habitation. "And, when clean, preserve it so;" prevent the introduction of uncleanly things into a clean house: or let her sweep the court-yard and the like.

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* From VISHNU, if the citation in the *Virádárnava* be correct.

XCVI.

RISHYAŚRINGA:—Let her attend to the business of the house, and heed her ornaments; after the daily bath, let her adorn her locks with flowers and with dress;

2. Privately let her retire early *from the couch of her lord*, that no other may perceive *her withdrawing;* let her pay adoration to the deities, and supply oblations with fragrant mixtures and blossoms.

"Attend to the business of the house;" be diligent in domestic affairs. "Heed her ornaments;" brighten them, by cleaning and the like. "After the daily bath adorn her locks;" embellish them braided after the daily bath. The *Retnácara*.

"Supply oblations with fragrant mixtures and blossoms;" at twilight, let her prepare oblations at home with mixt perfumes, lamps, blossoms, and the like, in honour of the deities: thus some explain the phrase. "Privately let her retire;" at the close of night, let her withdraw from her husband before any other person wakes.

XCVII.

SANC'HA and LIC'HITA:—A woman must not go forth without vesture, nor move without her upper garment; nor use perfumes, garlands, jewels, or variegated apparel in seasons of mourning; nor converse with strangers, except traders, mendicants and aged men; nor expose her navel. Faithful to her family, she must wear covering from her ankles upwards; and never bare her breasts; nor laugh uncovered, in the presence of respectable men.

Discovering her face "in the presence of respectable men;" but covered, she may indulge herself in laughter. The *Retnácara*.

"Without vesture;" a woman must not go forth unclothed. Another reading has, "a woman must not go forth unbidden;" she must not go beyond the house or field without the assent of her lord. She must not move in a short shift, with her breast bare, and without her upper garment. "Variegated;" of diversified colours. She must wear clothes from her ankles to her navel, and not loosen the covering of her breast in the presence of any person.

XCVIII.

VYÁSA:—Sitting at the door, continually looking out from the windows, conversing with despicable persons, and laughing *unseasonably*, are faults which bring infamy on the women of a family.

"Conversing with despicable persons;" talking with them.

XCIX.

MENU:—Drinking *spirituous liquor*, associating with evil persons, absence from her husband, rambling abroad, unseasonable sleep, and dwelling in the house of another, are six faults which bring infamy on a *married* woman.

All these are stated as modes of conduct which bring infamy on women. The *Retnácara.*

"Drinking;" quaffing spirituous liquors. "Associating with evil persons;" with disloyal women and the like. "Rambling abroad;" going to the houses of strangers, of her own accord, without a sufficient motive. Sleeping, or reposing, by day. Dwelling in the house of any stranger.

C.

VRĬHASPATI:—Drinking spirituous liquors, rambling abroad, sleeping by day, and neglect of *the household* business, are faults which bring infamy on a woman.

"Neglect of business" here signifies not performing the household business. The *Retnácara.*

The meaning is, not attending to the care of household utensils and the like, and not sweeping the house and so forth.

CI.

SANC'HA and LIC'HITA:—Let not a woman associate with harlots, with women whose conduct is immoral, with fortune-tellers, with seducers and corrupters, nor with sinners: by their society she would be perverted. Let her not attempt any thing injurious to her husband; nor use vessels, or other utensils employed at meals, of such sorts as are forbidden; nor sleep supine; nor wear sandals.

"Harlots;" courtezans. "Fortune-tellers;" women who practise divination: they are mentioned, considering them as disposed to pervert others. "Seducers;" women who delude others: these are mentioned with some distinction supposed between them and the women whose conduct is immoral. "Corrupters;" women who attempt to pervert *their companions:* these are supposed different from the women already described. "Sinners;" degraded women and others who have been guilty of crimes. The *Retnácara.*

Others explain "women whose conduct is immoral" to be such as are addicted to gaming and the like: they induce a disposition to evil in *other* women. "Seducers;" women practised in guile. "Corrupters;" women skilled in insidious discourse tending to lead the mind into various errors.

CII.

HÁRÍTA:—We will next propound the conduct enjoined to married women. The wife is the home: a man should not consider as his home a habitation ungraced by a wife; therefore is she another home. Thoroughly cleaning the house, let her remove impurities falling in a well-cleansed and dignified habitation, and lay up what is loose; let her shun discourse with other men *besides her husband,* and the company of a pretended mendicant; let her not frequent strange houses, plains or groves, or convents of mendicants; let her not loiter on the road to the *public* well, nor walk by twilight; let her not think of using the bed, the seat, the clothes, or the jewels

of others, without restoring them to a state of purity; nor eat in the same vessel *with another*, nor drink spirituous liquors, nor eat flesh-meat, nor orts, nor refuse, unless from her spiritual parents, her husband, or her son; let her be void of desire for other men *besides her husband;* let her shun vain expences, and avoid petulant contradiction, sloth, gloominess, emulation *of other families* and the like. Soiled with orts, she must not repair to the temples of the deities, or to the house of him to whom her affections are due; without counsel, or before she has supplied the *sacrificial* fire, she must not decorate her person, nor touch with unwashed hands the goblet, the sieve, or the vessels of the dairy: she must wash, and reposit in a secure place, the caldron, its lid, the ladle, and *other* utensils. On the morrow, again washing them, let her use them in the preparation of food: by her husband's directions she may touch the vessels employed for *the* milk, *whence oblations are supplied:* having washed, wiped and placed the metallic vessels, having swept and wiped the house and so forth, let her perform the offices committed to her at the approach of the time for oblations to the assembled gods, bathing according to the motive for ablutions: clothing herself with two white garments, having washed her hands and feet, having spit and having sipped water, let her enter the temple and pay her adorations; and let her place fire in the kitchen, provide sacrificial fuel, *cuśa* grass, flowers, oblations, and vessels used in propitiatory rites, and anoint with clarified butter the food and the like *intended for use, in the same manner with that intended for offerings;* and let her perform any other daily business. When all this has been done, and the fire has been supplied in honour of deities, let her bring the oblations for the wives of gods. When the offerings to deities, and the hospitable attentions to guests, have been performed, according to the means of the householder, and after satisfying his pupils and friends and her husband himself, the wife, with his permission, may eat the residue in private: and having rinsed *her* mouth with water kept for her own use, and washed and cleaned the vessels employed, she must lay out *a part of* the residue in a spot situated within the close, and equally distant from the north and east regions, *saying,* "Salutation to Rudra the lord of cattle!" this is a fixed rule. In the evening the same *offices* should be repeated, *which are directed for each successive morning.* As for what remains *to be done* after these offices, let her make a wall of ashes at the door, *saying,*

"Salutation to the adorable RUDRA marked with ashes! I make a fence of ashes;" and let her touch *therewith* her lord, her son and the rest, herself, and any thing which should be guarded. She must not enter her bed with unwashed feet, nor naked, nor soiled with orts, nor disrespectfully, nor without saluting her husband's feet; nor rise exposed to view, nor later than the rising of the sun; nor without a vessel of water. She must regularly clean the house; she must be circumspect, careful for the best, serene, full of good wishes; she must speak affectionately to her husband; she must not sit while he stands; nor sit above him, nor in a questionable place; nor gaze at him continually: she must wash his feet, press his limbs with her hands, attend him with a fan when he feels heat, and wipe from his limbs perspiration excited by the sultriness of summer. She must relieve him, when his head shakes *through pain*, and meet him in the yard when he returns fatigued with a load from another town. Entertaining no evil thoughts, let her do him honour with rice, grass and water presented in an *argha;* and, under his directions, practise austerities, execute the business of the deities, and perform ablutions.

"A wife is another home;" even she is the home, since *marriage* constitutes the order of a householder. "Thoroughly cleaning the house;" accomplishing the desecation of it by thorough sweeping. The *Retnácara.*

The sense is rendering the house neat, and sweeping it. "Lay up what is loose;" or hide what is unconcealed. "Shun discourse with other men;" if wishes may be thereby excited, avoid the sight of other men, and so forth: "and shun the company of a mendicant;" in the apprehension of his proving to be a pretended mendicant, refrain from associating even with a true one, lest her duty be infringed. "Let her not frequent the houses of others." "Groves;" this term is explained by AMERA, rows *of any thing, and of trees especially:* the sense is, 'regular woods.'

"Let her not loiter on the road to the well;" let her not stop on the road while going to the well. The *Retnácara.*

On that road especially, by which all persons fetch water, no delays are justified. "Nor walk by twilight;" still less by night. Let not a well-disposed woman indulge herself in such gratifications, lest infamy attend her.

Without again cleaning and washing them, let her not use the bed, seat or clothes of others, &c; let her not employ them in any circumstance. The *Retnácara.*

The last term, "jewels," being expressed in the plural number with the sense of "and the like," it is thereby intimated, that the acceptance of a litter and of other things, which have been used by strangers, is likewise improper.

"Eat in the same vessel;" take a repast with another. The *Retnácara.* The meaning is, off the same vessel with another.

Let her shun spirituous liquors and flesh meat, and avoid the orts and rejected food of any other besides her husband, his father, and his son. Or the sense may be, that even she who does drink spirituous liquors should not drink them out of the same vessel with any other than the persons enumerated. "Spiritual parent" denotes her husband's father and the rest.
The *Retnácara*.

"Desire;" eager wish. "Vain expenses;" useless expenditure of wealth.
The *Retnácara*.

"Petulant contradiction;" the construction *of the sentence* is, avoid controversy with her husband and the rest. Some read *pretyudvahanam* instead of *pretyudvadanam*, and explain it, 'her own contracting of *another* marriage when her husband espouses *another wife*.'

"Emulation;" dress and speech unsuitable to her family, and the like.
The *Retnácara*.

The sense is, "avoid sloth and the rest." "Gloominess;" causeless sorrow. "Nor, defiled with orts, enter the apartment of him to whom her affections are due."

"Without counsel;" without *due* consideration. The *Retnácara*.

The meaning is, let her not dress without consideration.

"The goblet;" the cup or the like used in sacrifice. "The sieve" or searce. The *Retnácara*.

"Vessels of the dairy;" vessels containing milk. This has a large sense; she must not touch with unwashed hands, any other vessel dedicated to the service of the deities.

And, washing the caldron and other utensils for the preparation of food on the succeeding day, deposit them in a safe place. The *Retnácara*.

Meaning, that she must not neglect them after preparing food for that day. To wash them is absolutely requisite; let her not suffer any prepared grain or condiments to remain in the vessels. "On the morrow;" explained by Amera, 'the day not yet arrived.'

The day for which the vessels were cleaned and laid by, before it arrived; when that day has arrived, again washing them, let her prepare food. The *Retnácara*.

"Use them in the preparation of food;" the meaning is, she must again clean the caldrons and other vessels used in cookery.

"By her husband's directions;" with her husband's assent.
The *Retnácara*.

Some remark that the sense is, 'vessels used for the milk intended for the deities.' "Having washed, &c." the three participles are referred to the term "metallic vessels."

"According to the motive for ablution;" '*suggested* by her husband,' should be supplied. Hence the sense is, at the approach of the time for oblations to the assembled gods, execute the offices committed to her, when her husband bids her perform ablutions. The *Retnácara*.

"According to the motive for ablutions;" on account of the mid-day bath. In fact the commission might be delivered by saying, "bathe:" the bath may therefore be directed by implication. Thus the meaning is, on learning from her husband that the time approaches for oblations to the

assembled gods, let her speedily bathe. The same should be understood of other business.*

"Having spit;" having ejected the phlegm or the like which was in her mouth. The *Retnácara*.

Immediately after placing fire in the kitchen or place of cookery, let her prepare food; and afterward bring the flowers, and the like, which had been previously collected. "Bring the oblations:" the term (*bali*) is explained by AMERA, implements or materials of worship. "Anoint with clarified butter, &c; and perform any other daily business." According to the *Retnácara*, the meaning is, smear with clarified butter the food intended for use, as that is smeared which is intended for the deities. Some words are supplied in the *Retnácara*, after this mode, 'observe her husband's directions;' it is supposed that the wife is not the person who brings the oblations for the wives of gods, after supplying the fire; for, were she the agent *in the sentence*, it would be useless to *add any term to* complete it: but her husband appears, from the purport of the text, to be the agent. Others, however, think there is no difficulty even without supplying *any supposed omission;* and they thus explain the phrase: "having anointed the food with clarified butter, she supplies her husband with fire in honour of the deities, and also brings to him the oblations intended for the wives of the gods."

After satisfying the deities, the guests, the inmates of the house, the pupils and friends, having *also* satisfied her husband with food, she may, with his permission, eat the residue; that is, what remains, when no other desires to eat more of the food. The *Retnácara* explains the particle in a disjunctive sense, and gives this construction; with her husband's assent, she may eat the residue, or even *eat of* the food, though some persons remain to be fed. Consequently she should eat the residue when no one remains unfed; for a text forbids others eating it: "what remains *untouched* is the food of the married couple,"† and if that cannot be, a part may be reserved. This opinion should be questioned, for the text only directs a repast on the residue. *However*, it should not be objected, that her feeding on the residue is positively enjoined by the sense of the text, inasmuch as others are previously mentioned. Lawyers hold, that since other inmates of the house, not specified in this text, must have a repast, the sense obtained from the terms of the text is, that she must eat last.

"Water kept for her own use;" water reserved for her own purposes. "Having rinsed;" having sipped without swallowing. "Cleaned;" removed foulness. The *Retnácara*.

The removal of foulness signifies scouring of the caldron with a rag or the like: consequently the meaning is, that it should be cleansed with abundance of water.

"In the evening the same should be repeated;" this is explained in the *Retnácara;* at the time of evening twilight also, the same offices should be

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* That is, she must perform the whole, on receiving directions for any one of connected offices.

† Similar to the texts of MENU, Chap. III., v. 116 and 117.

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repeated which are directed from the words "on the morrow again washing them" to the word "oblations." In the evening, or at night, she must again wash the caldron and so forth; for another repast at night is not forbidden to priests.

Two *daily* repasts are allowed by holy Sages to priests inhabiting *this* earth. *They may eat* by day, and again at night, after the first watch and a half, *but* before the second watch.

Priests should take their repast at a different time from the early hour forbidden by another text. Thus others expound the law.

"Make a wall of ashes at the door;" this is intended for an *auspicious* guard of the household effects. He subjoins an *auspicious* preservative for her husband, her son, and herself; "let her touch, therewith, her lord and the rest;" touch them with her hand soiled with ashes. "And any thing which should be guarded;" touch that also with ashes. The *Retnácara.*

The Sage declares the forms to be observed in reposing: not with unwashed feet, nor naked, nor soiled with orts, nor disrespectfully, nor arrogantly. The *Retnácara.*

That is, humbly and respectfully. "Let her not rise later than the rising of the sun;" let her rise before the appearance of the sun. "She must regularly clean the house;" she must sweep the dwelling-house and the like, at the three *proper* hours. She must be skilled in good offices. She must use such expressions as may please her husband.

The *Cáśic'handa:**—If clarified butter, salt, or oil, be deficient, let not a faithful wife tell her husband "there is none," but desire him to procure it.

Even in the case of deficiency, it should be said, "it is increased." RAGHUNANDANA.

This is directed, lest her husband be afflicted at hearing it abruptly said, "there is none." She must not sit while her husband stands, nor on a seat above his, nor gaze even at him continually. She must wash his feet; alleviate pain by the pressure of her hands; and attend him with a fan during hot weather: she must wipe his limbs with a cloth or the like. "When his head shakes;" when it is tremulous: seeing him return fatigued with an excessive load brought from another town, let her meet him in the court: and, with her husband's assent, she must keep the fasts ordained on certain lunar days and the like, pay worship to the deities and so forth, and perform voluntary ablutions. From parity of reasoning, the same should be understood of duties towards her father and the rest. Such is the sense of the text (CII).

If she be unacquainted with the sense of this ordinance, let her learn it from her husband's mother and the rest, or from her husband himself. If a woman, who, through insolence or the like, does not fulfil the intention of the ordinance, though able *to perform her duties*, be chastised by her hus-

* A portion of the *Scanda purána.*

band with a small rope or shoot of a cane, without infringing the settled usage, no offence is in that case imputable to her husband. To intimate this, a text of moral and religious law has been placed in the *Retnácara*, under a title of Judicial Procedure.

CIII.

MENU:—When the husband has performed the nuptial rites with texts of the *Véda*, he gives bliss continually to his wife here below, both in season and out of season; and he will give her happiness in the next world.

2. Though unobservant of approved usages, or enamoured of another woman, or devoid of good qualities, yet a husband must constantly be revered as a god by a virtuous wife.

3. No sacrifice is allowed to women apart from their husbands, no religious rite, no fasting; as far only as a wife honours her lord, so far she is exalted in heaven.

4. A faithful wife, who wishes to attain in heaven the mansion of her husband, must do nothing unkind to him, be he living or dead.

The text of law quoted in the *Retnácara* (LXXXVIII) declares the highest reward of female virtue. Observing an excellent conduct; behaving in the virtuous manner described by HARÍTA and others (CII); keeping her senses in subjection; neither looking at, nor conversing with, any other man *but her husband;* such a virtuous woman acquires renown in this world.

CIV.

MENU:—But she who is faithful to her lord, from the moment when she is given in marriage, through the whole period of her life, acquires the same abode with her husband, even as ARUND'HATÍ *attained a heavenly mansion.*

"Who is faithful to her lord;" even after her husband's death observing a virtuous conduct, and performing austerities and the like for his sake.

CV.

MENU:—While she who slights not her lord, but keeps her mind, speech, and body devoted to him, acquires high renown in this world, and in the next, the same abode with her husband.

"Who slights not her lord;" who is not disloyal. "The same abode with her husband;" here is supposed *heaven* obtained by sacrifices and the like performed in concert with her lord. CHANDÉSWARA.

But disloyal women do not acquire the same abode, even by sacrifices performed in concert with their lords.

The *Herivansa*:—Fruitless indeed are the religious rites of immoral females, O lovely woman!

CVI.

CÁTYÁYANA, quoted in the *Ch'handóga perisishta*:—Solely by obedience to her lord does a woman attain all the *heavenly* abodes: returning from heaven, she shall become the source of pleasures here below.

Some remark, that the particle excludes a reference to sacrifice: thus, even without sacraments or the like, but through unerring fidelity to her lord, every fruit *of good actions* is obtained even by a simple wish. Others say, without obedience to her husband those abodes are not attained: this, which had been already mentioned, is also declared by CÁTYÁYANA (CVI).

CVII.

VRĬHASPATI:—The virtuous woman, who, indisposed when her husband is sick, pleased when he is cheerful, squalid and pining when he is absent, dies when he deceases, must be considered as *truly* faithful to her lord.*

CVIII.

VASISHT'HA:—The abode of faithful wives, who are fond of home and truly rigid, and who have subdued their passions, shall be the same with that of their lords: but the mansions of shakals are assigned to disloyal wives.

"The same with that of their lords;" they shall dwell together with their lords in heaven. Even though the husband have committed sins, they are atoned by her merit.

CIX.

MENU:—But a wife, by disloyalty to her husband, shall incur disgrace in this life, and be born *in the next* from the womb of a shakal, or be tormented with horrible diseases, which punish crimes.

Consequently, on the subject of disloyalty, MENU and VASISHT'HA concur.

CX.

CÁTYÁYANA, in the *Ch'handóga perisishta*:—To what hell goes not a woman who neglects her lord through delusion of mind? With difficulty *again* attaining human life, what pain suffers she not?

CXI.

SANC'HA and LIC'HITA:—While nourishing her infant at her breast, let her avoid onions, flesh-meat, and other forbidden diet, *reflecting*, "my body is *the* food *of my infant*:" through that personality is a *Bráhmana* mixed *with the maternal body;* an embryo is indeed produced from what is eaten and drunk by his mother.

* Cited in Book V, as a text of HÁRÍTA.

From the transmission of food eaten to the infant, he might be degraded; therefore, it is an offence to eat onions and the like.

CXII.

MENU:—But she who, having been forbidden, addicts herself to intoxicating liquor even at jubilees, or mixes in crowds at theatres, must be fined six *racticás* of gold.

"Even at jubilees;" and "having been forbidden:" the text supposes persons to whom the law *in general* permits the use of intoxicating liquor. VAŚISHT'HA, quoted in the *Retnácara*, propounds a law relative to those who are never permitted to drink spirituous liquor.

CXIII.

VAŚISHT'HA, quoted in the *Retnácara*:—That woman, of the priestly class, who shall drink intoxicating liquor in this world, the deities will not admit, *in the next*, to the same abode with her lord; losing purity, she remains in this world, and is born a leech in water, or a sow.

Here "a woman of the priestly class" is mentioned indefinitely: and, a fine having been denounced in the preceding text, against drinkers of intoxicating liquors, a fine should be also understood in this case; and it must be proportioned to the offence.

CXIV.

YÁJNYAWALCYA:—A woman of the sacerdotal class who has drunk inebriating liquors, attains not the mansion of her lord; she is born again, in this world, a bitch, a female vulture, or a sow.

CXV.

YAMA:—That woman of the sacerdotal class who addicts herself to drinking spirituous liquor in this world, the deities admit not, *in the next*, to the same abode with her lord; she remains impure in this world, becoming a bitch, a female ass, or a sow.

SECT. II.—*On the Conduct of Women whose Husbands are absent.*

CXVI.

MENU:—While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave her no support, let her subsist by *spinning and other* blameless arts.*

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* This text has been already cited at v. XLV, 2.

While he resides abroad, after settling the means of her support, let her subsist on that maintenance. CHANDÉSWARA.

"Firm in religious austerities;" abstemious in respect of food and the like: and this should be understood of both cases.

CXVII.

YÁJNYAWALCYA:—A woman whose husband resides abroad must avoid sports, personal decoration, crowds and jubilees, laughter, and visits to the houses of strangers.

"Sports;" playing at ball and the like: this should be shunned. "Personal decoration;" using the fruit of the *ámalaca* and the like: by such embellishments the desires of other men are *excited*. Although by prohibiting the resort of women, whose husbands are absent, to crowded shows and jubilees, it is permitted to those whose husbands are near; yet it should only be practised with caution: and one whose husband is absent should at no time resort there, lest thoughts of men be excited, and infamy be the consequence of conducting herself by her own *mere* pleasure.

"Sports;" play at ball or other external games. "Laughter;" laughing in public. ŚÚLAPÁNI.

CXVIII

VRĬHASPATI:—A wife, in the absence of her lord, should not use dress, behold dances, hear songs, resort to crowded spectacles and jubilees, nor use flesh-meat and inebriating liquors.

CXIX.

VISHNU:—During the absence of her husband, a woman must not use dress, nor resort to the houses of strangers, nor stand at the door or window.

"Must not use dress;" must not employ decoration. CHANDÉSWARA.

The terms are explained by AMERA synonymously, 'embellishment of dress.'

Decoration may signify decking the hair. Although a woman whose husband is near has already been forbidden to stand at the door or the like, she whose husband is absent is likewise forbidden, that she may not at any time stand there; or to show the greater heinousness of the offence.

CXX.

SANC'HA and LIC'HITA:—Amongst all his wives, let her of the priestly class guard her *own* conduct during the absence of the husband; let the father and mother guard the rest, or, after them, a wife of the military class. No dependent women of a family, whose husbands are absent, should use litters, behold dancers, gaze at exhilarating pictures, decorate their persons, resort to the garden, drink *spirituous liquors* openly, gratify themselves with savoury

drinks and food, sport at ball, wear perfumes, garlands or jewels, rub their teeth *with colouring substances*, or *their eyelids with* collyrium, nor use mirrors, nor any embellishments of dress.

"Amongst all his wives;" among the several wives of one man, a *Bráhmaní* and others, she who is of the priestly class should guard her own conduct. The father and mother should watch the conduct of the rest; or, if they be not present, the wife of the military class should guard her own conduct and that of both the other wives. The *Retnácara.*

The remainder of the text is thus explained; all dependent women, whose husbands are absent, may not practise the several things enumerated, from the use of litters, to that of embellishments in dress. Whence is the suggestion of several wives of one man; for there is no objection to receive the text as a rule concerning women of the four classes, though severally married to different husbands? From the inferible sense of the expression, "or, after them, the wife of the military class," which signifies, that, on failure of the father and mother, the wife of the military class shall guard the conduct of the rest, it is deduced, that the woman of the military class and those of the commercial and servile classes are wives of the same husband: and those three being found to be wives of the same man, it is consistent with the subject to suppose the *Bráhmaní* married to the same husband. What then is the rule concerning a woman of the military class married to a military man and so forth? By parity of reasoning, the *Cshatriyá* should guard her own conduct: but, if women of the commercial or servile class, married to a man of equal rank, cannot guard themselves, the father and mother should guard them; for it is directed that wives should be guarded by any practicable means.

Others say, the construction is this: "amongst all the wives, let the *Bráhmaní* guard the conduct of others, and her own, (as is literally expressed; after *her*, if she be incapable of that office, the father and mother; or on failure of these, the wife of the military class.

"Litter;" a small litter, or *dólá*. The *Retnácara.*

"Dances;" exhibitions of dancing. "Decorate their persons;" adorn themselves. "Drink openly;" drink inebriating liquors or the like in a public place. "Gratify themselves with savoury drinks and food;" drink sweetened water, or eat confects or the like. "Rub their teeth; for cleanliness it may be done: but rubbing the teeth with tinging substances, for the purpose of embellishment, we think, is forbidden. The construction is this: the use of litters and the rest, by women whose husbands are absent, is not *permitted.*

CXXI.

HÁRÍTA:—In *the* absence *of her husband*, a woman should not adorn nor unbind her locks.

Some remark, that the prohibition of unbinding her locks does not prevent her bathing; but she should not expose her hair unbound. "Adorn;" the construction *of the sentence* refers this also to her locks of hair. CHANDÉSWARA observes, that the text, again forbidding women whose husbands are absent to do things already forbidden to women who have no husband, enforces the prohibition.

CXXII.

YÁJNYAWALCYA :—She who is deprived of her husband should not reside apart from her father, mother, son, or brother, from her husband's father or mother, or from her own maternal uncles; else she becomes infamous.

She also whose husband resides abroad, should, if possible, take the protection of these persons: if she be also deprived of her sons and the rest, she must not recur to her father's family while there are kinsmen of her lord; for this text is referible to women whose husbands have deceased. Yet it may be *also* admitted *under this head;* for she also whose husband resides abroad has no companion, and it is necessary that her conduct should be guarded. But the person who shall have authority over a widow, is appointed by the law. The person who shall have authority over the wife of a man residing abroad, should, in the first instance, be selected by her lord; on failure of that, he is appointed by the law. This distinction should be maintained.

CHAP. III.

ON

THE DUTIES OF A FAITHFUL WIDOW.

SECT. I.—*On Dying with or after her Husband.*

CXXIII.

ANGIRAS:—That woman who, on the death of her husband, ascends the *same* burning pile with him, is exalted to heaven, as equal in virtue to ARUNDHATÍ.

2. She who follows her husband *to another world*, shall dwell in a region of joy for so many years as there are hairs on the human body, or thirty-five millions.

3. As a serpent-catcher forcibly draws a snake from his hole, thus, drawing her lord *from a region of torment*, she enjoys delight together with him.

4. The woman who follows her husband *to the pile*, expiates the sins of three generations, on the paternal and maternal side, of that family to which she was given while a virgin.

5. There, having the best of husbands, *herself* best *of women*, enjoying the best delights, she partakes of bliss with her husband *in a celestial abode*, as long as fourteen INDRAS reign.

6. Even though the man had slain a priest, or returned evil for good, or killed an intimate friend, the woman expiates those crimes: this has been declared by ANGIRAS.

7. No other effectual duty is known for virtuous women, at any time after the death of their lords, except casting themselves into the same fire.

8. As long as a woman, *in her successive transmigrations*, shall decline burning herself, like a faithful wife, on the same fire with her deceased lord, so long shall she be not exempted from *springing again to life in* the body of some female animal.

9. When their lords have departed at the *fated* time of *attaining* heaven, no other way but entering the *same* fire is known for women whose virtuous conduct and whose thoughts have been devoted to their husbands, and who fear the dangers of separation.

"Burning pile (CXXIII 1);" literally, seat of sacrifice: her husband's burning pile. This is called *sahamarana*, or dying with *her husband;* for it coincides with the text "let her ascend the burning pile, embracing *the* "*corpse of* her busband *already* placed there." This text, however, may be indifferently applied to *anumarana*, or dying after *her husband.* "On the human body (CXXIII 2);" on the body of that woman, or on the human body in general. "Follows;" goes *to another world* immediately after her husband: "*to another world*" must be supplied: who goes thither, either by the forms of *sahamarana*, dying with, or *anumarana*, dying after, *her husband.* Nor does she alone enjoy heaven, she enjoys it with her husband (CXXIII 3). Nor does she atone for herself and husband only, but for others also (CXXIII 4). "That family to which she was given while a "virgin;" that is, her husband's family.

It is said, she shall enjoy heaven. For what space of time shall she enjoy bliss? The Sage declares the period (CXXIII 5). "Having the best of husbands;" whose husband is absolutely best; an apposition, in which the middle term is rejected. Or the word "husband" itself implies the asseveration; consequently, as the divinity is venerated with the highest tokens of adoration, so is her husband remembered with veneration. Hence, herself superior to other women, delighting in the best path, or that which is declared by the *Véda*, she partakes of bliss, &c.

If her husband had slain a *Bráhmana*, how should she enjoy heaven with him without partaking of his sin? The Sage replies *to that question* (CXXIII 6). "This has been declared by ANGIRAS;" the text propounded belongs to ANGIRAS. Since the guilt of slaying a *Bráhmana* is effaced, doubtless the guilt of killing a cow and the like is also atoned. Or the particles "or" are used in an affirmative sense.

Since cremation of her husband's body would be forbidden, had he, in his then existence, slain a priest; *the sense must be, that* one who had perpetrated that crime in a former existence, is delivered by his wife dying with him.
RAGHUNANDANA.

Consequently the meaning is this: since the penalties for the murder of a *Bráhmana*, perpetrated in a former existence, have been suffered, cremation of his present body is not forbidden. VÁCHESPATI BHATTÁCHÁRYA.

According to this opinion, the cremation of a body slightly infected with leprosy is allowed. But, although the body of a sinner in the first degree, whose sin is unknown, and yet unatoned by suffering the penalty of it, is to the sight actually burned; yet the reward of dying with a husband is not in such a case attained. But others think, if the body of her husband, though a sinner in the first degree, but whose sin was unknown, be anyhow burned, her reward is attained: for the literal sense of the ordinance, "casting herself into the flames after embracing the corpse of her husband," cannot be set aside; and a text declares pure, what is not known to be defiled, (MENU, Chap. V, v. 127). This question would require much discussion.

The Sage celebrates this act of dying with her husband (CXXIII 7). This is the best duty for virtuous women, averse from the enjoyment of other men and the like: *but*, of women who are not averse from intercourse with other men, the production of a son is the *principal* duty.

Others say, *the performance of* this duty confirms the attainment of rewards by those virtuous women who are described by VRĬHASPATI (CXVIII). Others again argue, from the text of the *Mahábhárata*; which only directs this expiation for women who have been averse from their husbands, that rewards are fully attained by others, namely, by virtuous women, if, inasmuch as is possible, they deviate not from the path of conduct prescribed by HÁRÍTA and others (CVII).

CXXIV.

The *Mahábhárata*:—Those who have slighted their former lord through an evil disposition, or have remained at all times averse from their husbands,

If they follow their lords at the *proper* time, in such a mode, are all purified from lust, wrath, fear, and avarice.

"Whose virtuous conduct, &c." (CXXIII 9); whose conduct and thoughts have been amiable, and devoted to their husbands, and who are fearful of the dangers or of the wound growing from separation. "Their lords;" their husbands. "Heaven;" a celestial mansion. The *Retnácara.*

Others explain the terms 'who had husbands to whom their conduct and thoughts were devoted, or whose conduct and thoughts were devoted to their husbands.'

VYÁSA expressly propounds *anumarana*, or dying after her husband *on a subsequent day.*

CXXV.

VYÁSA:—Learn the power of that widow, who, hearing that her husband has deceased, and been burned in another region, speedily casts herself into the fire:

2. Though he have sunk to a region of torment, be restrained in dreadful bonds, have reached the place of anguish, be seized by the imps of YAMA,

3. Be exhausted of strength, and afflicted and tortured for his crimes; still, as a serpent-catcher unerringly drags a serpent from his hole,

4. So does she draw her husband *from hell*, and ascend to heaven by the power of devotion. There, with the best of husbands, lauded by the choirs of APSARAS.

5. She sports with her husband, as long as fourteen INDRAS reign.

In that text, to prevent her following him after a long space of time, it is said, "speedily." Her "power;" what she is able to accomplish: such is the power of a woman who has entered the fire, that she delivers her lord, even though he be tainted with sin.

A woman dying with her husband, embraces his corpse, and casts herself into the same fire: does this woman embrace the fire alone?

CXXVI.

The *Brahme-purána:*—No other way is known for a virtuous woman, after the death of her husband; the separate cremation of her husband would be lost, *to all religious intents.*

2. If her lord die in another country, let the faithful wife place his sandals on her breast, and, pure, enter the fire.

3. The faithful widow is pronounced no suicide by the *recited* text of the *Rĭgvéda:* when three days of mourning are passed, she obtains legal obsequies.

"The separate cremation of her husband;" the outward ceremony of burning his body. "His sandals;" mentioned indefinitely, intending only, says RAGHUNANDANA, something which had belonged to her husband. "By the text of the *Rĭgvéda;*" by the solemn text recited from the *Rĭgvéda.** So the commentators: but others say, she is no suicide; because *sahamarana* and *anumarana* are declared in the *Rĭgvéda;* that is, she partakes not of the sinful taint arising from self-murder: as in slaying cattle which is authorized by the *Véda,* so in the act of suicide authorized by it there is no sin.

CXXVII.

Vrĭhat Nárediya purána:—Mothers of infant children, pregnant women, they who have not menstruated, and they who are actually unclean, ascend not the funeral pile, O lovely princess!

Some explain females who have not menstruated, young girls: others expound the term, women whose pregnancy may be suspected; and say, these are mentioned by the same rule by which one name of kine may signify cattle of that sort, and a similar term in the same sentence may denote cows only.

"Princess;" addressing the mother of SAGARA. RAGHUNANDANA.

CXXVIII.

VRĬHASPATI:—The mother of an infant child may not relinquish the care of her infant to ascend *the pile;* nor *may* a woman in her courses, nor one who *lately* brought forth a child, *burn herself with her husband;* a pregnant widow must preserve the embryo.

But if the infant can be nurtured by any other person, in that case the mother is entitled *to follow her deceased husband.* RAGHUNANDANA.

Thus the general prohibition concerning the mother of an infant, delivered in the text of the *Nárediya-purána,* is limited by the text of VRĬHASPATI. For instance, the mother of a very young infant, and a woman unclean after child-birth, may not ascend *the funeral pile.* The

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* This, I suppose, alludes to the solemn text of the *rich,* recited when a widow casts herself into the flames.

uncleanness after child-birth is declared, in the following text, to last twenty nights after bearing a son, and a month after bearing a daughter.

The husband may employ, in every sort of business, his wife who has borne a son, when she has bathed after twenty nights from the child-birth; and her who has borne a daughter, when she has bathed after a month.

But in all cases a woman of the servile class partakes of impurity for one month *only*, to avoid too great a disparity. In either case, if the daughter die within the month, impurity ceases at that very moment: but if a male child die within the period of impurity ordained for the several classes *by reason of the dead*, the uncleanness continues to the end of those periods.

MENU:—A man of the sacerdotal class becomes pure in ten days; of the warlike, in twelve; of the commercial, in fifteen;* of the servile, in a month.

Hence, after the period of uncleanness by reason of child-birth, if the infant were a little grown, and could be nurtured by another, a woman *then* widowed, may go with *her husband to another world*: and a woman of the servile class may ascend the pile within a month after child-birth, if her impurity had ceased *when her husband deceased*, in consequence of another cause of uncleanness intervening.

On full consideration of the whole text, it appears that all the wives of a *Bráhmana*, or other man, desiring particular benefits for themselves and their husband, are entitled to *die with or after him*, either *in* the forms of *sahamarana* or *anumarana*, unless they be pregnant, or mothers of infant children, or the like. In this opinion, delivered in the *Retnácara*, RAGHUNANDANA does not concur; for a woman of the sacerdotal class is forbidden to ascend a separate pile, by the *following* text of GÓTAMA, cited in the *Mitácshará* from the commentary on YÁJNYAWALCYA composed by DÉVABÓDHA.

CXXIX.

GÓTAMA:—A woman of the sacerdotal class cannot go *with her husband to another world*, ascending a separate pile.

A distinction is propounded in respect of a woman unclean by reason of her menstrual discharge.

CXXX.

The *Bhawishya-purána*:—If, indeed, *her* husband die after the third night of her uncleanness, the corpse, O twice-born men, should be kept one night, that she may follow him in death.

CXXXI.

VYÁSA:—If the faithful wife reside at a place which may be reached in one day, and notice be given *her of her husband's death*, the cere-

* Translation of MENU, Chapter, V, v. 83, where an error of the press has substituted five for fifteen.

mony of burning her lord should not be performed so long as her arrival may be *expected.*

Thus, after the husband's death, notice should be sent, and the ceremony of burning her lord be performed on the next day when she can be no longer expected to come.

Sect. II.—*On the Duties of Widows choosing to survive their Husbands.*

CXXXII.

Vrĭhaspati :—A wife is considered as half the body *of her husband,* equally sharing the fruit of pure and impure acts: whether she ascend *the pile* after him, or survive for the benefit of her husband, she is a faithful wife.*

By this it is declared that faithful wives may live after the death of their husbands. The following text shows the conduct to be observed by them:

CXXXIII.

Vishnu :—After the death of her husband, a wife must practise austerities, or ascend *the pile* after him.

Even her practice of austerities is beneficial to her husband. The austerities are explained by Raghunandana: 'continence, and refraining from the leaf of betel and the like.'

CXXXIV.

Prachétas :—An anchorite, a student in theology, and a widow, must avoid the leaf of the betel, inunctions, and feeding from vessels of zinc.

Inunction (*abhyanjana*) in its accepted sense of rubbing with oil: that only is forbidden according to Raghunandana. It is mentioned in the *Áyur Véda*, and called *abhyanga.*

The *Áyur Véda*:—When oil is applied to the crown of the head, and reaches all the limbs, if both arms be sufficiently wetted with water, it is called *abhyanga.*

2. If the oil sparingly reach the limbs, and the arms be not sufficiently wetted, it is *máshti,* a distinct inunction (*abhyanga*) intended for the head (*mastaca*) and the rest of the limbs.

Since there is no proof of coincidence between civil law and the science of *prolonging* life, the word *abhyanjana* may be taken in its derivative sense of rubbing with oil; and inunction in general is thus forbidden. Others again hold, that betel leaf is mentioned indefinitely; for another ordinance prohibits fish and the like: they explain *abhyanjana,* embellishing the eyes with collyrium; and take it in a large sense, comprehending the decoration of hair and the like.

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* The first hemistich is again cited as part of another verse, Book V, v. 399 1.

CXXXV.

Smriti:—Only one meal each day should ever be made *by a widow*, not a second repast by any means; and a widowed woman, sleeping on a bed, would cause her husband to fall *from a region of joy:*

2. She must not again use perfumed substances: but daily make offerings for her husband, with *cuśa* grass, *tila*, and water.

3. In the month of *Vaiśác'ha*, *Cártica*, and *Mágha*, let her observe special fasts, perform ablutions, make gifts, travel to places of pilgrimage, and repeatedly utter the name of VISHNU.

She must make those offerings, if there be no son, grandson, or the like. So the *Párijáta;* but, in fact, the offerings may be made although there be such persons.

CXXXVI.

The Matsya purána declares veneration due to faithful women:—Therefore should faithful women be venerated like deities by all men; *for*, through their merits, the three worlds are governed by the king.

Through their merits the king governs and protects the three worlds. Another reading substitutes *yaśah'sriyam* for *jagat trayam:* "his renown is increased, and the king obtains prosperity." Veneration should be shown them by respectful speeches, and gifts of things desired and so forth.

These qualities of a faithful wife are cited by CHANDÉSWARA on the subject of the widow's title to the heritage of a man who leaves no son.

CXXXVII.

HÁRÍTA:*—Leaving her husband's favourite abode, keeping her tongue, hands, feet, and *other* organs in subjection, strict in her conduct, *all* day mourning her husband, with harsh duties, devotion, and fasts to the end of her life, a widow victoriously gains her husband's abode, and repeatedly acquires the same mansion with her lord, as is thus declared:

"That faithful woman who practises harsh duties after the death of her lord, cancels all her sins, and acquires the same mansion with her lord."

Is not a *celestial* abode unattainable by a woman who has no son, even though she rigidly avoid sensuality; for it is learned from a text of the *Véda* quoted by VASISHT'HA, that "one who has no son attains not the celestial world;" and, in that text, there is no restriction of childless men? It is therefore best for a widow to obtain a son procreated according to the

* I omit the text and commentary of another quotation from the same author, which is wholly unconnected with the present subject. T.

law of appointment for raising up offspring; and forbearance of sensuality is not infringed by coition for that purpose. VRĬHASPATI confutes this inference.

CXXXVIII.

VRĬHASPATI:—Strict in austerities and rigid devotion, firm in avoiding sensuality, and ever patient and liberal, a widow attains heaven, even though she have no son.

Such is the great efficacy of her austerities. MENU likewise forbids the acceptance of an appointment *to raise up male issue*, whether through an eager desire of bearing children, or for the sake of preserving her own life.

CXXXIX

MENU:—Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man.

2. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women as were devoted to one only husband.

Thus the desire of *intercourse* with another man, *after the death of her husband*, for the sake of preserving her own life, is obviated.

CXL.

MENU:—Many thousands of *Bráhmanas* having avoided sensuality from their early youth, and having left no issue in their families, have ascended, *nevertheless*, to heaven.

This is mentioned by way of illustration.

CXLI.

MENU:—And, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity.

Consequently, a region of joy is attained, without leaving a son, by those who voluntarily practise austerities, and abstain from conjugal embraces; but only if a son be born is it attained by those who remain in the order of a housekeeper. Hence it is said, "having avoided sensuality from their early youth;" and, in the text which will be quoted from YAMA, "superior to sensual appetites."

CXLII.

MENU:—But a widow who, from a wish to bear children, slights her *deceased* husband *by marrying again*, brings disgrace on herself here below; and shall be excluded from the seat of her lord.

She does not attain the seat of her lord, for which purpose alone she wishes to bear children; therefore, she ought not to slight her *deceased* husband *by marrying again*.

CXLIII.

MENU:—Issue begotten on a woman by any other *than her husband*, is here declared to be no progeny of her's; no more than a child begotten on the wife of another man belongs to the begetter: nor is a second husband allowed, in any part *of this code*, to a virtuous woman.

A child begotten on the wife of another person belongs not to the man *who begot the child*: this also is mentioned by way of illustration.

CXLIV.

YAMA:—Let her continue, as long as she lives, performing austere duties, avoiding every sensual pleasure, and cheerfully practising those rules of virtue which have been followed by such women as were devoted to one *only husband*.

2. Neither in the *Véda*, nor in the sacred code, is religious seclusion allowed to a woman; her own duties, practised with a husband of equal class, are indeed her religious rites: this is a settled rule.

3. Eighty-eight thousand holy Sages of the sacerdotal class, superior to sensual appetites, and having left no issue in their families, have ascended, *nevertheless*, to heaven.

4. Like them, a *betrothed* damsel, become a widow, and devoting herself to pious austerity, shall attain heaven, though she have no son: this, MENU, sprung from the self-existent, has declared.

"Women devoted to one only husband;" *literally*, wives of one only. Here damsel signifies a married or betrothed woman. The *Retnácara*.

CXLV.

CÁTYÁYANA:—Though her husband die guilty of many crimes, if she remain ever firm in virtuous conduct, obsequiously honouring her spiritual parents,

2. And devoting herself to pious austerity after the death of her husband, that faithful widow is exalted to heaven, as equal in virtue to ARUNDHATÍ.

The meaning is; let her not go even to a better husband, though she know that her lord died guilty of heinous crimes. The inference is this; since the text of MENU forbids the procreation of a son on the widow of a kinsman to gratify her wish to bear children, she must not have recourse to another man through a wish to leave issue; she may only receive the embraces of another, if she be duly authorized by her husband or other competent person. Accordingly it is familiarly known from the *Bhárata* and other works, that the wife of PÁNDU, by command of her husband, during his lifetime, received the embraces of DHERMA, VÁYU and ŚACRA.* This subject should be examined by the wife.

Such are the duties of a woman whose husband is deceased.

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* A title of INDRA.

CHAP. IV.

ON

INCONTINENCE.

SECT. I.—*On the Appointment of a Wife to raise up Offspring.*

CXLVI.

Menu, quoted in the *Retnácara*:—On failure of issue by the husband, *if he be of the servile class*, the desired offspring may be procreated, either by his brother or some other *sapinda*, on the wife who has been *duly* authorized.*

CXLVII.

Smriti:†—A wife duly authorized by her spiritual parents, through a wish that male issue should be obtained, may go to her husband's brother, and he may approach her until a son be produced:

2. But, when a son is begotten, he must refrain; otherwise duty is violated.

3. Sprinkled with clarified butter, or anointing his limbs with expressed oil, averting his face from her's, and shunning the contact of limb with limb,

4. A younger *or an elder* brother, authorized by spiritual parents, may approach his brother's wife for the sake of offspring, that the family may be perpetuated, and not through amorous desire.

5. If there be no spiritual parent living, he may be directed by the king, on the failure of the family; then, by his command, he may inform the woman and approach *her*,

6. *Though considered as* his daughter-in-law, with purity, in the mode abovementioned, once in the season for procreating sons, and until she conceive: when pregnant, she is even *as* his daughter-in-law.

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* See the gloss on this text, cited again v. CCXXIX, Book V.

† Náreda. See Book V, in the gloss on v. CCXXXIII.

7. Afterwards, if the man or woman conduct themselves otherwise, through carnal desire, they both shall be amerced by the king; else justice is violated.

"The wife who has been duly authorized (CXLVI);" by her spiritual parents, must be supplied. The construction of the other phrase is this: 'the desired offspring may be procreated.' "A wife duly authorized" (CXLVII); that is, for the necessary purposes of the appointment. "Duty is violated" (CXLVII 2); there is a failure in religious duty. "Younger brother" (CXLVII 4); mentioned generally, comprehending also an elder brother. "May be directed by the king" (CXLVII 5); hence it is to be understood, that the king is also qualified to make such an appointment. "Inform the woman;" teach her the *general* illegality of receiving the caresses of other men, and the *particular* legality of an appointment to raise up offspring. "His daughter-in-law;" his brother's wife, *considered as* similar to a daughter-in-law.

CXLVIII.

YAMA:—Silent, in a dark night, *let the appointed kinsman approach* his brother's wife, when she has bathed after her courses, careful that she perceive not the odour and contact of the hair of his head, beard, nails, and hair of his body;

2. Dressed in a single garment, his limbs anointed with clarified butter, not perfumed, grave and sad, averting his face from her's, and shunning the contact of limb with limb,

3. He must endeavour to effect pregnancy; but, when that is effected, he must refrain: let him not approach her, if she have issue, nor after a son has been begotten.

4. *The king* should cause the auspicious ceremony for a happy delivery, and all other solemn rites, to be performed by those who desire offspring for their brother, and obsequies for their ancestors.

"Dark;" obscure: it is thus forbidden to make known his features. "Grave;" not indulging amorous joy. "When a son has been begotten, *the husband's brother* must perform the auspicious ceremonies for a happy delivery;" such is the construction *of the sentence*, and the causal has the original sense *of the verb*, as in the example RÁMA governed the realm. "By those *brothers* who desire offspring, &c.;" that should be performed, may be supplied. Since the term, expressed in the plural number, suggests, that there is no restriction, it may be performed by any one of those brothers.

On this *text* CHANDÉSWARA remarks, that the king should cause the ceremonies for a happy delivery and the like to be performed, by the intervention of the brothers of the deceased, who desire offspring for their brother and obsequies for their ancestors; such is the sense; and plurality is not here determinate; the law subsists *in full force*, though one brother only be living.

CXLIX.

Yájnyawalcya:—Sprinkled with clarified butter, let a brother of her husband, a kinsman who offers funeral cakes to the same ancestor, or one who is descended from the same original stock, being authorized by spiritual parents, through a wish that a son may be produced, approach a woman who has no son, at the proper season.

2. Let him approach her until she may possibly be pregnant; but if he act otherwise, he shall be degraded *from his class*. A son begotten in this mode shall be a *Cshétraja*, or son begotten on the wife *of a kinsman*.

"Being authorized by spiritual parents:" this intends the assent of the deceased husband's father or the like, expressed in this form, "beget a son on her;" or thus, "let him beget a son on her." But Súlapáni thinks it implied, that the husband's brother should likewise be authorized by his own spiritual parents, since it is directed that the woman also should be authorized by her spiritual parents. Others infer, from the words "through a wish that a son may be produced," which they explain 'a wish for a son who shall belong to himself,' that a man desiring male issue for himself may approach a widow; but as the text mentions "a woman who has no son," *the child so begotten* is likewise *considered as* the offspring of her husband: accordingly it bears another import.

"He is legally heir to, and offers the funeral cake for, both *fathers*."

But this only takes place when it has been agreed that he shall be *considered as* son of both.

That interpretation does not coincide with the opinion of Súlapáni; for he reads the last measure of the verse, "shall be son of the woman's husband:"* and the words "through a wish that a son may be produced," may be anyhow explained in another sense.

CL.

Menu:—The first object of the appointment being obtained according to law, both *the brother and the widow* must live together like a father and a daughter by affinity.

After a son is begotten, they must behave as brother's wife and brother's father-in-law, and the like, not as husband and wife.

Sect. II.—*On the same; and on such Husbands as may be forsaken by their Wives without any consequent Penalty.*

CLI.

Dévala:—A husband may be forsaken by his wife, if he be an abandoned sinner, or an heritical mendicant, or impotent, or

* *Cshétricasya bhavét sutah*, instead of *Cshétrajas tu bhavét sutah*.

degraded, or afflicted with phthisis, or if he have been *long* absent in a foreign country.

"Abandoned sinner;" expelled, in the legal form, from virtuous intercourse. "A mendicant;" addicted to mendicity in a form unauthorized by the law. "Afflicted with phthisis;" suffering under the disease *called* phthisis. The *Retnácara*.

"If he be absent in a foreign country;" if he have gone to a foreign region.

CLII.

DÉVALA:—Whether *such* a husband be alive or dead, his wife may take another lord, for the sake of obtaining progeny, not through female independence.

By this, an appointment, in the form abovementioned, is authorized.

CLIII.

DÉVALA:—Eight years let a woman of the sacerdotal class wait for her absent lord; or four years, if she have borne no children; after these periods she may unite herself to another man:

2. Let a woman of the military class wait six years; or three years, if she have borne no children: and a woman of the commercial class, if she be a mother, *must wait* four years; but two only, if she be childless:

3. For women of the servile class no period is ordained, nor do they violate *their* duty *by an early second marriage*; but, for those especially who have borne no children, the settled rule prescribes one year.

4. These periods are declared for the wives of absent men, if there be no intelligence *concerning them*; but if it be heard that the husband is living, these periods must be doubled.

5. If they have children, this conduct is enjoined to women by the lord of created beings; hence, if such women marry another *husband*, it is no offence.

"Let a woman of the military class wait six *years*;" if she have borne children; it must be so understood. The *Retnácara*.

On this subject MENU also has said something:

CLIV.

MENU:—If he live abroad on account of some sacred duty, let her wait for him eight years; if on account of knowledge or fame, six; if on account of pleasure, three: *after these terms have expired, she must follow him.*

A husband absent on account of some sacred duty, such as executing the command of his spiritual preceptor, or the like, must be expected by his wife during eight years; after that term has expired, his wife must follow him; as directed by VAŚISHT'HA.

CLV.

VAŚISHT'HA:—The wife of a husband who lives abroad, must wait for him eight years; after *that period* she must follow him, *giving notice thereof* to five *persons*.

"If on account of knowledge," six years must be expected; if he live abroad "on account of fame" to be acquired by the display of his own knowledge, *he must* also *be expected* six years: but if he go abroad to enjoy another wife, three years.

CULLÚCABHATTA.

Thus, according to his opinion, commerce with another man, at the expiration of eight years, is not authorized by law. The text of VAŚISHT'HA must be supplied, "after *eight years;* and, *giving notice* to five *persons*." But another reading, has "eight," *instead of five;* and the sense is *thus* obvious: "after eight *years*."

But other lawyers remark, that long absence is considered by Sages as equivalent to *natural* death; for, in the text of DÉVALA, it is said, "if it be heard that the husband is living, the periods are doubled." Consequently, if it be not heard that the husband is living, the appointment should be made at the end of eight years, and so forth, *according to the difference of class*. May it not be said, that the text does not relate to appointments *for raising offspring*; for, were it so, the period directed for those who have borne children would be unmeaning: and should it not therefore be affirmed, that this is a period of probation before women can forsake their husbands for a second marriage? On this point *the same lawyers* propose a solution of the difficulty: although they have several children, the text (CLIII 5) allows the appointment of women to take place at the end of eight years; or, if a woman who has born a son, by whom deliverance from the hell called *put* is effected, though he have died, desire male issue for the sake of the *benefit arising from* other duties *to be performed* by a son, she must be patient for a long space of time. Common sense obviates any *supposed* offence, if, unable to bear separation from her husband, she join him within the eight years; and it also obviates any *supposed* offence, if she do not follow him at the expiration of the eighth year. Thus the text is vendicated from its alleged futility.

"If there be no intelligence" (CLIII 4): the term is explained by AMERA, tidings or news. A woman of the sacerdotal class must wait for her husband eight years, if he reside abroad on account of some sacred duty; in other cases, she must wait six years or the like, for the text has the same import with that of MENU (CLIV): and for women of the military and other classes the periods are, *successively, in the order of the classes*, shorter by a quarter *than the periods prescribed to women of the priestly class*. Nor should it be argued that the text of MENU concerns a woman of the military class who has borne children: there is no ground for quitting the sacerdotal class first mentioned.

CLVI.

MENU:—By men of twice-born classes* no widow, *or childless wife*, must be authorized to conceive by any other *than her lord;* for they who authorize her to conceive by any other, violate the primeval law.

2. Such a commission, *to a brother or other near kinsman*, is no where mentioned in the nuptial texts of the *Véda;* nor is the marriage of a widow even named in the laws concerning marriage.

3. This practice, fit only for cattle, is reprehended by learned *Bráhmanas;* yet it is declared to have been the practice, even of men, while VÉNA had sovereign power.

4. He possessing the whole earth, and *thence only called* the chief of sage monarchs, gave rise to a confusion of classes when his intellect became weak through lust.

5. Since his time the virtuous disapprove of that man who, through delusion of mind, directs a widow *to receive the caresses of another* for the sake of progeny.

"By any other" (CLVI 1); by any other than her husband's brother or kinsman offering funeral cakes to the same ancestor: and this supposes a case where one or the other exists; for YÁJNYAWALCYA also admits any man sprung from the same original stock, on failure of them. The *Retnácara.*

Thus, in the case of an appointment *to raise up offspring*, a rule is propounded in this text for appointing a husband's brother or other kinsman. If the connexion of a widow with another man were indicated by the tenor of holy texts, or by the letter of the law, would it not then only be permissible? The Sage replies to that argument (CLVI 3): thus, since there is no holy text for such a commission to another man, it is not suggested by the tenor of such texts; and since that commission is nowhere mentioned in nuptial prayers, it is not suggested by the tenor of such prayers: and it should be understood, that there is no law in any such form, which could authorize a man to marry a widow, if he cannot obtain a damsel. Hence, before the reign of VÉNA, it was reprehended by learned men conversant in the *Védas;* but while VÉNA reigned, that practice was introduced by his independent authority, slighting revealed law: since that time, some few persons follow this practice, through delusion of mind; but it is reprehended by the learned. This practice, therefore, although it have been actually followed by some who were not true *Bráhmanas*, should not be admitted, because it has no foundation in law, and was only introduced by the sinful VÉNA. Thus some expound the texts.

But CULLÚCABHATTA, on the authority of the texts which will be cited from VRĬHASPATI (CLVII), expounds them *otherwise:* before the reign of VÉNA, appointments to raise up offspring were authorized; but VÉNA having exhibited a bad practice founded thereon, such a commission even to a brother or near kinsman has been prohibited since his time.

* The text is here read, "by her own kinsmen." The other reading seems more authentic. T.

Others again hold, that a woman should not be authorized to conceive by any other than her lord, neither by his brother or near kinsman, nor by any other person; for such a commission is not suggested by the tenor of holy texts, nor by the letter of the law. MENU considers such an appointment as a virtual marriage: and the practice, which was introduced in the reign of VÉNA, of any person at random begetting issue on a widow, is reprehensible.

Since MENU has authorized such a commission (CXLVI), is not the present text (CLVI) inconsistent with the preceding one? VRĬHASPATI explains the rule according to the difference of the four ages:

CLVII.

VRĬHASPATI:—Appointments *of kinsman to beget children on widows, or married women, when the husbands are deceased or impotent*, are mentioned by MENU, but forbidden by himself with a view to the order of the *four* ages: no such act can be legally done *in this age* by any other *than the husband.*

2. In the first and second ages men were endued with true piety and sound knowledge; so *they were* in the third age; but in the fourth, their *moral and* intellectual powers are diminished:

3. Thus were sons of many different sorts made by ancient Sages, but such cannot now be adopted by men destitute of those eminent powers.

Consequently, such appointments were premitted in the ages preceding the fourth, but forbidden in the present age: and VÉNA reigned in this period. Such is CULLÚCABHATTA's notion.

The texts of DÉVALA (CLIII) also may be argued to concern other ages, as well as the commission to the husband's brother. The *Retnácara.*

Such texts of DÉVALA, therefore, regulate the marriages of women of the sacerdotal and other classes to a second husband; and the text of VAŚISHT'HA directs a wife to follow her husband after five years. In that case, if she go and return without obtaining any intelligence concerning him, she may take another husband at the expiration of the eighth year. Such is the opinion of the authors of the *Retnácara.* But some lawyers remark, that the text of DÉVALA does not obviate the sinfulness of such conduct, but prevents a fine to the king. Thus may the law be concisely stated.

SECT. III.—*On Second Marriages, or on Women previously enjoyed by another.*

CLVIII.

NÁREDA:—Others are women who had a different husband before (*parapúrvá*); they are declared to be of seven kinds, in order as enumerated: among these, the twice-married woman is of three descriptions; and the disloyal wife, of four sorts:

2. A damsel, not deflowered, but blemish by *a previous* marriage, is the first twice-married woman (*punerbhú*), *named* from the repetition of nuptial rites;

3. She who is given in marriage by her parents, *duly* considering the laws of districts *and families*, but through love accedes to another man, is declared to be the second twice-married woman.

4. She who is given by her spiritual parents to a *sapinda* of equal class, on failure of brothers-in-law, is considered as the third;

5. Whether she have borne children or be childless, a woman who, during her husband's life, unites herself to another man from carnal desire, is the first disloyal wife (*swairiní*);

6. She who deserts an infant husband, and has recourse to another man, but returns to the house of her lord, is considered as the second;

7. But she who, after the death of her husband, leaves his brother or other kinsman, *whose protection* she received, and suffers the caresses of a stranger through carnal desire, is considered as the third;

8. And she who, having had her protector assigned to her, nevertheless gives herself to another man, saying, "I am thine," being purchased with money, or oppressed with hunger or thirst, is considered as the fourth:

9. This rule is propounded in regard to women twice-married, and those who are unchaste; the first respectively are *more* despicable *than those subsequently mentioned;* and the last in gradation are preferable to *those* who precede them.

The particle "and" is here disjunctive. "Women twice-married and unchaste" are expressed in the sixth case with the sense of the seventh. (*The rule concerning them*, &c.) The *Retnácara.*

CLIX.

SANC'HA and LIC'HITA, after premising three women twice-married, and four unchaste, add:—Among these the first are respectively more despicable *than those subsequently mentioned;* the alternate cases, in which their children take the heritage or offer the funeral cake and water, are settled according to the qualities of the mother.

Among these, the first twice-married woman is twice actually espoused with nuptial rites; the second is only once *actually espoused;* the third is given in marriage by her kinsmen: such is the distinction. But the subsequent text (CLX) does not imply, that nuptial rites are twice celebrated, but that they are celebrated with a second husband. Thus, according to some lawyers, the whole is well explained. Others hold this distinction:

the first chooses a second husband for herself; the second is given away by her parents; the third is given by her parents to a man proper for the commission, either her husband's brother, or, on failure of him, a *sapinda*. The real distinction consists in this: she who is again espoused with solemn rites, is a twice-married woman, or *punerbhú;* she who receives the embraces of another man without a formal marriage, is an unchaste woman, or *swairiní*.*

"The qualities of the mother (CLIX)" the son of a twice-married woman, whose conduct is in other respects strictly moral, is entitled to the heritage of his natural father; but not the son of *such* a woman, whose conduct is immoral.

CLX.

YÁJNYAWALCYA:—Whether a virgin or deflowered, she who is again espoused with solemn rites is a twice-married woman; but she who slights her lord, and, through carnal desire, receives the embraces of a man equal in class, is an unchaste woman.

"Slights her lord;" does not respect him, nor preserve his bed *unsullied*. "A man equal in class" is mentioned generally, comprehending men of different class; else adultery with a man of a different class would be a case omitted. Hence also the lower class of the husband neglected does not constitute the *parapúrvá* in the text of MENU (CLXI), but the acceptance of another husband. CHANDÉSWARA.

CLXI.

MENU:—She who neglects her former (*púrva*) lord, though of a lower class, and takes another (*para*) of a higher, becomes despicable in this world, and is called *parapúrvá*, or *one who had a different husband before.*

CLXII.

HÁRÍTA:—An unchaste, and a twice-married woman, the mother of a son born in adultery while the husband is alive, a lascivious woman, and one who eats all sorts of food, *whether lawful or forbidden;* should all five be considered as mothers of *'Súdras*:

2. The children who are any-how born of those women, should not be admitted to social meetings; they are considered as unfit for society.

The term *rétódháh* (subdued by sensual appetites) signifies the mother of a *cunda*, or son born in adultery while her husband is alive. "A lascivious or lecherous woman" is one whose inordinate lust conducts her to one man immediately after repeated converse with another. The *Retnácara.*

"*Cunda*" is explained by AMERA, an adulterine begotten during the husband's lifetime; and *gólaca*, an adulterine begotten after his death. The apposition of terms gives the sense "mothers of *'Súdras*." "Anyhow;" whether born during the period of the *mother's* intercourse with her husband, or during that of her intercourse with a stranger.

* See an ampler gloss on these texts in Book I, after v. CCXX.

CLXIII.

CÁTYÁYANA:—That woman who generates a son through her inclination for sensual pleasures, and not through a wish that her husband may have male issue, is declared despicable and sinful.

2. If a woman, deserting her husband's race, receive the caresses of another man, she is considered as despicable in this world, and is called *parapúrvá*, or *one who had a different husband before*:

3. He to whom such a woman unites herself, shall not be deemed her lord: this law *prevails* unless she be purchased or obtained from her husband.

4. One who had a different husband before, should be confined and chastised for her offence; but he who chastises a woman unable *to avoid the offence*, or not aware of it, shall be liable to a fine.

5. If a woman be secured from the hands of robbers, from a rapid river, from famine, from danger in a national calamity, or from a wilderness, or if she be forsaken *by her husband*, or purchased *from him*,

6. There is no offence in the enjoyment of her; this is a certain law: a man may accept a woman given by her lord, if he *freely* bestow her; and not otherwise.

CLXIV.

CÁTYÁYANA:—A woman may neither be given nor accepted against her own consent: this is a settled rule of law.

2. A man must not, in consequence of such a purpose, cohabit with a woman who is of a higher class *than his own*, who is reluctantly *sold*, or who has borne a son.

"Her husband's race" (CLXIII); a man sprung from the same primitive stock: by this it is intimated that she receives the caresses of another man, without a commission to raise up offspring. He to whom a woman unites herself, though she had a different husband before, is not *deemed* her lord: in the text, one inflection is used for another. The meaning is, that her first husband, to whom her hand was joined, is her lord. The Sage subjoins an exception, "unless she be purchased, &c." or unless she be obtained from her husband: this will be explained further on. "For her offence" (CLXIII 4); for the offence she has committed. The Sage describes a woman obtained *from her husband* (CLXIII 5). "Rescued from the hands of robbers, &c.," the construction *of the sentence* is this, obtained by rescuing her from the hands of robbers and the rest.

"Or if she be forsaken *by her husband*, or purchased *from him*;" if she be bought. In this case there is no offence; that is, no punishable offence.

The *Retnácara*.

Consequently, there is offence in the enjoyment of other women than those mentioned, even with their own consent, if without the assent of their lords. In saying, that is not a punishable offence, the meaning is, that it is *nevertheless* a sinful act. If her husband give her away, then a man may accept a woman so bestowed by him, but not one who is not given by her husband. But even the husband should not give away his wife without her own consent; and a man should not accept a wife given by a foolish husband, in breach of that *rule*: therefore, both shall be fined if they violate the law *by such a gift and acceptance*. This gift also comprehends sale; for another text of CÁTYÁYANA, delivered under the title of Subtraction of what has been given (Book II, Chap. IV, v. VII 1), forbids the gift or sale of a wife without her consent. Barter also is a virtual sale.

It should be here noticed, that, even by those who contend for the validity of a gift, when a wife is given or aliened without her consent, a fine should be imposed, under the authority of the law, on him who accepts one given without her own consent: but a woman of higher class should not be taken even with her own consent. This the Sage intimates in the last text (CLXIV 2).

It must be here observed, that the three descriptions of twice-married women, abovementioned, ought not to be espoused; for a text, cited in the *Udváha tatwa*, expresses.

CLXV.

1. Daughters of the seven twice-married women must be shunned as girls of the lowest birth; and she who has been verbally or mentally betrothed, on whose arm a bracelet has been auspiciously tied,
2. Who has been given away after touching water, whose hand has been taken by a bridegroom, or who has been approached with nuptial fire, and the twice-married woman who has borne children.

"On whose arm a bracelet has been tied; *and she* who has been given "away after touching water:" the terms are so explained in the *Retnácara* and other works. RAGHUNANDANA.

Is not she who is first betrothed to one, and afterward solemnly espoused by another, a twice-married woman, and may not a man *legally* marry her who has been given to one *only?* No; the precept, "espouse not a twice-married woman," is similar to the phrase, 'he accomplishes an act:' now that act is accomplished, of which the action is complete; and a woman becomes twice-married by the *second* solemn espousal.

CLXVI.

MENU:—The king himself shall take a fine of ninety-six *panas* from him who gives a blemished girl *in marriage for a reward*, without avowing her blemish.

On this CULLÚCABHATTA observes, 'the king, for his own sake, should impose a fine of ninety-six *panas* on him who gives to a bridegroom a blemished girl, without disclosing her blemish, such as one insane or the like.' Here, a previous marriage must be understood as included under the term "and the like."

CLXVII.

MENU:—But the man who, through malignity, says of a damsel that she is no virgin, shall be fined a hundred *panas* if he cannot prove her defilement.

The man who through malignity says, "she is no virgin; she has been deflowered;" shall be fined by the king a hundred *panas*, if he cannot prove the fault alleged against her. CULLÚCABHATTA.

Thus the preceding text may allude to this blemish. How is it an imputation on a damsel to say of her, that she is no virgin? The Sage, therefore, proceeds as follows:—

CLXVIII.

MENU:—The holy nuptial texts are applied solely to virgins, and no where on earth to girls who have lost their virginity; since those women are *in general* excluded from legal ceremonies.

"Virgins;" or girls not deflowered, nor given in marriage to another. Holy nuptial texts may not be legal; still a marriage may take place: what then is the objection? The Sage proceeds thus:

CLXIX.

MENU:—The nuptial texts are a certain rule in regard to wedlock; and the bridal contract is known by the learned to be complete *and irrevocable* on the seventh step *of the married pair, hand in hand, after those texts have been pronounced.**

Therefore marriage is not valid without all the ceremonies, from the junction of hands, to the seventh step of the married pair.

"The bridal contract;" the perfect bridal contract. RAGHUNANDANA.

The text of YÁJNYAWALCYA (CLXXXIII), explained in the *Dípacalicá* as denouncing the highest amercement against one who gives a faulty damsel in marriage without disclosing her blemish, must be understood as relating to excessive blemishes; in allusion to this, CULLÚCABHATTA, in his gloss on the text of MENU (CLXVI), states "one insane or the like." Some think loss of virginity to be the defect alluded to by YÁJNYAWALCYA: this opinion may admit of discussion, for MENU notices the blemish of lost virginity immediately after the text in question. Thence, excessive blemish may be explained, defect in the sexual organ or the like. Should her husband die after the damsel has been affianced, cannot legal issue be produced by any means whatsoever? It cannot in the fourth age. But the Sage states this subject otherwise:

CLXX.

MENU:—The damsel, *indeed*, whose husband shall die after troth verbally plighted, *but before consummation*, his brother shall take in marriage, according to this rule:

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* It is a part of the marriage ceremony for the bride and bridegroom to walk seven steps, hand in hand, during the recital of certain prayers. T.

2. Having espoused her in due form of law, she being clad in a white robe, and pure in her moral conduct, let him approach her once in each proper season, and until issue *be had.*

"According to this rule;" according to the rule which will be mentioned. On failure of brothers, a kinsman shall take her in marriage; for the text coincides with one already cited (CXLVI). The meaning is, that he must beget a son on the wife verbally betrothed, according to the law of appointments to raise up offspring, which has been already delivered. CULLÚCABHATTA concurs in this exposition; but adds, that the brother should espouse her with the ceremonies of marriage. If any person, though acquainted with the legal impediment, be willing to accept her, may her father give in marriage a damsel *already* betrothed to another? To this question MENU answers in the negative:

CLXXI.

MENU:—Let no man of sense, who has once given his daughter to a suitor, give her again to another; for he who gives away his daughter, whom he had before given, incurs the guilt and fine of speaking falsely in a cause concerning mankind.

He incurs the guilt thus propounded: "*He kills* a thousand *kinsmen* by false evidence concerning the human race."* This text resolves the doubt whether a damsel may be again given in marriage, since the bridal contract was not complete, because the married pair had not proceeded to the seventh step (CLXIX). CULLÚCABHATTA.

Thus, since gift acquires validity from the mental act of giving (for donation is a mental act), and since dominion ceases on the verbal promulgation of donation, the question, whether a second gift may be made, cannot exist. The objection is thus answered. But, if the husband's brother be willing to accept her, she may be given to him, as declared in the following text:—

CLXXII.

MENU and VAŚISHT'HA:—If a nuptial gratuity have actually been given to a damsel, and he who gave it should die *before marriage,* the damsel shall be married to his brother, if she consent.

This is limited to the case where a nuptial gratuity has been given: the former text (CLXX 1) is applicable to the case where no nuptial gratuity has been received, and it assumes the form of an appointment to raise up offspring. CULLÚCABHATTA.

Consequently, in his opinion, this difference is established: if a nuptial gratuity have been given, a marriage with the husband's brother takes place; if none have been given, she remains the wife of her first husband. But others think, the gift of a nuptial gratuity here denotes generally that she is betrothed: and thus, if the damsel consent, she may be married to her husband's brother; but if she do not consent *to that marriage,* an appointment to raise up offspring may take place, or she may lead a life of chastity. The consent of her husband's brother is also requisite, for the

* MENU, Chapter VIII, v. 98.

damsel is blemished *by having been affianced.* A nuptial gratuity having been incidentally mentioned, MENU censures the receipt of it:

CLXXIII.

MENU:—But even a man of the servile class ought not to receive a gratuity, when he gives his daughter in marriage; since a father, who takes a fee *on that occasion,* tacitly sells his daughter.

2. Neither ancients nor moderns, who were good men, have ever given a damsel in marriage, after she had been promised to another man:

3. Nor, even in former creations, have we heard *the virtuous approve* the tacit sale of a daughter for a price, under the name of a nuptial gratuity.

Even a man of the servile class ought not to receive it, much less should a twice-born man conversant in sacred literature. Is not this inconsistent with the text, which mentions the ceremony of *Asuras* as peculiar to a mercantile and a servile man;* for an *Asura* marriage is preceded by the acceptance of a nuptial gratuity *from the bridegroom?* According to *good* authorities, the *Asura* marriage is approved so far as it concerns the bridegroom, and is reprehended in as much as it concerns him who gives the damsel.

One text (CLXXIII 2) refers to the case where a nuptial gratuity has been actually received; the other (CLXXI), to the case where none has been accepted. CULLÚCABHATTA.

The meaning is, that there is not consequently any *vain* repetition. But others hold, that the first text has the form of a precept; but this text (CLXXIII 2) states the authority of practice: the subsequent text (CLXXIII 3) censures nuptial gratuities, and is no repetition of the preceding text (CLXXIII 1). CULLÚCABHATTA, however, admits that it is a repetition of prior texts. He explains "former creations," former periods *of destruction and renovation of the world.*

CLXXIV.

VASISHT'HA:—If her husband die after a damsel has been given to him with water poured on his hands, and troth verbally plighted, but before she has been contracted to him by holy texts, that virgin belongs to her father alone.

CLXXV.

YAMA:—Neither by water poured on his hands, nor by verbal promise, is a man acknowledged as husband of a damsel; the marital contract is complete, after the ceremony of joining hands, on the seventh step *of the married pair.*

That a damsel can only once be given in marriage, supposes her married by the ceremony of joining hands. RAGHUNANDANA.

* MENU, Chapter III, v. 24.

Here is an *apparent* inconsistency with the text of MENU (CLXX); for he prohibits the gift of a damsel to any other. It is thus reconciled by RAGHUNANDANA; since the texts coincide with that which directs the damsel to be married to her husband's brother, if she consent (CLXXII), a *Cshétraja* son should be procreated by her husband's brother, if the damsel consent; else, she may be married as a virgin. The subsequent text (CLXXI) relates to a complete gift. This opinion of RAGHUNANDANA is followed in practice by the principal *Bráhmanas* of *Rá'd'ha.*

Others think, that the text of VAŚISHT'HA (CLXXIV) intimates the gift of the damsel by nuptial rites to her husband's brother or other kinsmen, at an auspicious moment; but if they refuse her, it shows that she may be given to another. The text of YAMA (CLXXV) has the same import, and alludes to participation of the husband's family and wealth. Thus, if the bridegroom die after the damsel has been affianced to him, the possibility of giving her in marriage to another is shown. It should not be asked, how is a second gift possible, since the father's property is annulled by his mental relinquishment? Under the authority of the text, her father, even without property, may use expressions signifying gift, to effectuate the *nuptial* ceremony. Or the text of VAŚISHT'HA (CLXXIV) may be referred to a promised gift: and thus, if the bridegroom die after a girl has been promised in marriage to him, *another* may raise up a son for him alone; for a thing promised ought not to be given to another. It should not be objected, that the text of MENU (CLXX 1) concerns a gift in words, not a *mere* promise. Promise is indicated by the expression "troth plighted." If there be no kinsmen of the bridegroom, or if they refuse the girl, she may be given to another: but the girl's consent is required; for, if her consent be requisite in giving her to her husband's brother, surely it is required by law in giving her to another.

CLXXVI.

YÁJNYAWALCYA:—Once is a damsel given in marriage; he who detains her shall incur the punishment of a thief: but if a worthier bridegroom offer, he may take the damsel though given away, *provided the first were undeserving.*

"Given away;" given in words *only.* Since the first bridegroom is undeserving through his ignorance of sacred science and the like, a worthier bridegroom, superior in the excellent qualities of competent science and the like, *may be accepted:* this concerns an *'Asura* marriage. ŚÚLAPÁNI.

So, after premising the single gift *of a damsel,*

CLXXVII.

NÁREDA thus *proceeds:*—This law is declared in regard to five forms of marriage, namely, the ceremony of BRAHMÁ and the rest (*the ceremony of the* Dévas, *of the* Rishis, *of the* Prájápatis, *and of the* Gandharvas); but the gift requires excellent qualities *in the bridegroom for its irrevocable validity* in three forms of marriage, *namely,* the ceremony of the *'Asuras* and the rest (*the ceremony of the* Racshasas *and that of the* Pisáchas).

SÚLAPÁNI adds, that the ceremony of the *Racshasas* and that of the *Pisáchas* are intended by the term "and the rest."

"Given away" (CLXXVI); given in words, promised, and so forth. "This law" (CLXXVII); the precept limiting a single gift.

RAGHUNANDANA.

GÓTAMA:—A man shall not give even what he has promised to a person whom the law declares incapable of receiving.*

His want of religious qualification is here the cause of his not being entitled to the gift.——The *Retnácara,* cited by RAGUNANDANA in the *Udváha tatwa*.

CLXXVIII.

VASISHT'HA:—From a man of contemptible birth, from an eunuch or the like, from a degraded man, from one afflicted with epilepsy, vicious, or tainted with *shocking* diseases, and from a frequenter of harlots,

2. A parent may take back a damsel, though given away; and so may he one married to a man *known from his family name to be* sprung from the same primitive stock.

"Epilepsy;" the disease so called, originating in vitiated air: it is the cause of his falling into water, or fire, and the like, and occasions loss of sense. "Married to a man sprung from the same primitive stock:" the terms are explained by respected authorities, 'given in words by a man of the same primitive stock.' Some observe, that the phrase is comprehensive, including *Sapindas* and the rest; else her marriage could not be effected.

CLXXIX.

MENU:—*But* it is better that the damsel, though marriageable, should stay at home till her death, than that he should ever give her in marriage to a bridegroom void of excellent qualities.

"Void of excellent qualities;" destitute of science, and similar qualities.

CULLÚCABHATTA.

It should be understood, that the offence arising from not disposing of a marriageable damsel, occurs only when a proper husband, possessing the qualifications suitable to her family, can be found.

CLXXX.

CÁTYÁYANA:—If a damsel is betrothed to two or more persons, and the first bridegroom arrive before the second nuptials are completed, then, of all the persons to whom she is promised, he to whom the first promise was made shall obtain her;

2. And the other shall recover what he had given to the bride: but if the first bridegroom arrive when the *second* nuptials have been consummated, he shall receive back what he had given.

* Book II, Chapter IV, v. XLVII.

He must restore the girl to the first bridegroom, and pay a fine to the king, as directed by YÁJNYAWALCYA (CLXXVI).

CLXXXI.

CÁTYÁYANA:—Should a man depart after giving the nuptial gratuity, it becomes the exclusive property of the damsel: she must be detained one year, and may *afterwards* be legally given in marriage to another:

2. But if tidings arrive, she must wait three years, and after that period the girl may be given to another at pleasure.

"If tidings arrive;" if news be received. RAGHUNANDANA.

This supposes that he went abroad without the assent of the girl's father, but fixed a time for the marriage agreed to. "A nuptial gratuity:" there is no proof that he who has given nothing ought to be waited for.

CLXXXII.

NÁREDA:—The man who abandons an unblemished damsel after accepting her, shall be amerced in a pecuniary fine; and he must marry that damsel.

CLXXXIII.

YÁJNYAWALCYA:—He who gives a faulty damsel in marriage, without disclosing her blemish, shall be fined in the highest amercement; and he who abandons an unblemished girl, shall be amerced in a hundred *mrishas*.

The penalty for giving a *faulty* damsel in marriage without disclosing her blemish, and for a bridegroom abandoning a blameless girl, is the highest amercement. SÚLAPÁNI.

CLXXXIV.

MENU:—Even though a man have married a young woman in legal form, yet he may abandon her, if he find her blemished, afflicted with diseases, or previously deflowered, and given to him with fraud:

2. If any man give a faulty damsel in marriage, without disclosing her blemish, the husband may annul that act of her ill-minded giver.

"Have married;" have promised to marry. On this CULLÚCABHATTA observes: 'Even though he have received her in the form suggested by the 'following precept, or in another form, "The gift of daughters in marriage '"by the sacerdotal class is most approved, when they have previously '"poured water into the hands of the bridegroom,"* he may abandon her, 'if he discover, before the seventh step, that she has an ill token ascertained 'from palmistry or the like, that she is diseased, has been accused of losing 'her virginity or the like, or was given to him with fraud by concealing a '*superfluous finger or other* redundant member or similar deformity; hence 'there is not in such a case any offence in abandoning her: for this

* MENU, Chap. III, v. 35.

'purpose, and not to direct the abandoning of her, the text is propounded. 'The other text is also propounded to show that there is no offence in 'abandoning a faulty bride: he may, by returning her, annul the act of her 'ill-minded giver, who gives a faulty damsel in marriage without disclosing 'her blemish.'

Others hold, that the first text declares there is no offence in abandoning a bride, even without finding a blemish, when the father has substituted another in place of her whom he had shown, and who, unknown to him, had an ill token according to palmistry, had a redundant finger or other member, was afflicted with a severe distemper, had been deflowered or the like; and which blemish he afterwards discovered. But the other text declares, there is no offence in abandoning a damsel, whose blemishes the bridegroom discovers after her father had betrothed her to him without disclosing her defects though known to himself.

MENU propounds the blemishes of damsels:

CLXXXV.

MENU:--Let the twice-born man espouse a wife of the same class with himself, and endued with the marks of excellence.

2. She who is not descended from his *paternal or maternal* ancestors within the sixth degree, and who is not *known by her family name to be* of the same primitive stock with his father or mother, is eligible by a twice-born man for nuptials and holy union:

3. In connecting himself with a wife, let him studiously avoid the ten following families, be they ever so great, or ever so rich in kine, goats, sheep, gold, and grain:

4. The family which has omitted prescribed acts of religion; that which has produced no male children; that in which the *Véda* has not been read; that which has thick hair on the body; and those which have been subject to hemorrhoids, phthisis, to dyspepsia, to epilepsy, to leprosy, and to elephantiasis.

5. Let him not marry a girl with reddish hair, nor with any deformed limb; nor one trouble with habitual sickness; nor one, either with no hair, or with too much; nor one immoderately talkative; nor one with inflamed eyes;

6. Nor one with the name of a constellation, of a tree, or of a river, of a barbarous nation, or of a mountain; of a winged creature, a snake, or a slave; nor with any name raising an image of terror;

7. Nor one very fat or very lean; or very tall or very short; nor one older than himself; nor one wanting a limb; nor one prone to theft or contention.

8. Let him choose, for his wife, a girl whose form has no defect; who has an agreeable name; who walks *gracefully* like a phenicopteros or a young elephant; whose hair and teeth are moderate respectively in quantity and in size, whose body has exquisite softness.

9. Her who has no brother, or whose father is not well known, let no sensible man espouse, through fear lest, *in the former case*, her father should take her first son as his own *to perform his obsequies*; or, *in the second case*, lest an illicit marriage should be contracted.

Let him avoid these families (CLXXV 3), however much they abound in kine, goats, sheep, money, and grain: "the family which produces no male children," but daughters only; since the procreation of a son may not be expected: "that in which the *Véda* has not been read;" in which knowledge of the *Véda* is deficient: and that in which even the females have long and thick hair on the body: in such a family let him not espouse a girl, be she ever so young; nor in those which have been subject to hemorrhoids (the particular disease so called), phthisis or marasmus, dyspepsia or depraved digestion.

Let him not marry a girl immoderately talkative, or blameably loquacious; nor one with the name of a constellation or lunar asterism, or with the name of a barbarous nation devoid of science and refined language, or with the name of a snake or serpent, or of a slave or bondsman; or with any name raising an image of terror, or exciting sensations of fear.

CLXXXVI.

YÁJNYAWALCYA:—*Sprung* from a noble family of learned priests, which is recommended by ten persons, *universally* celebrated, and not tainted with contagious diseases and crimes;

2. Endued with these excellent qualities, equal in class, and eminently learned, should be the bridegroom *chosen for a damsel.*

"Endued with these excellent qualities;" sprung from a family celebrated as free from the contagion of distempers and crimes; and also possessed of the good qualities mentioned by other Sages.

CLXXXVII.

NÁREDA:—The penalty is double for a bridegroom who conceals his own blemishes when he marries; and a wife may abandon a husband who communicates any thing noxious.

"Penalty;" amercement. ŚÚLAPÁNI.

"May abandon;" no fine to the king is incurred by a wife abandoning such a husband.

CLXXXVIII.

MENU:—A wife, given by the gods, *who are named in the bridal texts*, let the husband receive and support constantly, if she be virtuous, though he marrried her not from inclination: such conduct will please the gods.

2. To be mothers, were women created; and to be fathers, men: religious rites, therefore, are ordained in the *Véda* to be performed *by the husband* together with the wife.

CLXXXIX.

MENU:—In whatever family the husband is contented with his wife, and the wife with her husband, in that house will fortune be assuredly permanent.

2. Certainly, if the wife be not elegantly attired, she will not exhilarate her husband; and if her lord want hilarity, offspring will not be produced.

3. A wife being gaily adorned, her whole house is embellished; but if she be destitute of ornament, all will be deprived of decoration.

CXC.

MENU:—"Let mutual fidelity continue till death:" this, in few words, may be considered as the supreme law between husband and wife.

2. Let a man and woman, united by marriage, constantly beware, lest, at any time disunited, they violate their mutual fidelity.

Let the mutual fidelity of husband and wife, in respect of religious duty, wealth and pleasure, continue till death: this, briefly, should be deemed the supreme law between man and woman. They must always take such care that they infringe not mutual fidelity, becoming disunited in any matter concerning religion, wealth, or pleasure.

CULLÚCABHATTA.

PART II.

SUCCESSIONS.

BOOK V.

ON

INHERITANCES.

CHAP. I.

ON

PARTITION OF PATRIMONY.

SECT. I.—*On Succession in general.*

ART. I.—*On property ; and on the Transfer of it.*

I.

NÁREDA :—That title of law, under which a distribution of the paternal estate is instituted by sons, has been called, by the wife, Partition of Heritage.

"Under which ;" under which title of law. "Is instituted ;" is made.
The *Retnácara.*

What descends from the father is "paternal;" and that is called, Property devolving *on sons* by the death of the father. Both expressions, "paternal *estate*" and "by sons," are merely illustrative of relation or consanguinity; for the term inheritance,' or 'partition of heritage,' is also used to signify a distribution of property among any relatives. Accordingly NÁREDA also, having premised the forensic term Partition of Heritage, notices the distribution of property left by the mother and the rest. So MENU likewise, premising the same title, without employing the word father or other limited designation, propounds the distribution of property in every relation. JÍMÚTAVÁHANA.

II.

MENU :—Thus has been declared to you the law, abounding in the purest affection, for the conduct of man and wife, together with the practice of raising up offspring *to a husband of the servile class* on failure *of issue by him begotten* : learn now the law of Inheritance.

"Estate" (I); property. "Paternal;" obtained through the relation *of the son* to the father. RAGHUNANDANA.

Consequently that property, on which a distribution or partition of a vested right, depending on relation *or consanguinity*, may be instituted, is named distributed heritage, a title of jurisprudence. In short, heritage is a title of law. Since the merits of opposite pleas set up by a plaintiff and defendant ("this allotment of shares is improper; this allotment of shares is equitable;") may be determined under *the title of Heritage*, which comprehends the allotment of shares, that title of judicial procedure is taken in a literal sense, "*inheritance or heritage.*" Since this word, and the term which occurs in the text of MENU (Book II, Chapter I, v. II, 4, *and which term has been there explained "law of inheritance"*), may signify the partible heritage, because a rule expresses, that neuter derivatives from active words are similar to *nouns denoting* substance, or because the term is derived in the passive form, there is no objection *to this interpretation*. Thus some lawyers expound the terms.

Since this title of jurisprudence has not been expressly distinguished by that name, the obvious design of the writer would be subverted; *for* the *other* seventeen denominations which occur in the text of MENU, namely debt and the rest, non-payment of wages, larceny and the rest, bear an abstract sense, whilst one denomination only would signify the thing which possesses the abstract nature. The title of Loan and Payment comprises the several abstract properties which constitute a creditor and so forth, as has been already explained. By the rule quoted, grammarians, who contend that action is single, acknowledge its similarity to substance, and thereby permit the use of such terms in the dual and plural numbers. Words of this description do not denote substance. If they did, there could be no inflection with a neuter sense, since the derivatives would not bear the abstract sense of the verb. The same must be universally admitted on the supposition of a passive inflection. If that be questioned, then *the text must be thus paraphrased:* on whatever property a partition or distribution of the patrimony is instituted, such distribution of that property (for the connexion of the co-relatives is positive,) is a title of jurisprudence called Partition of Heritage. In a word, the partition which takes place in respect of partible heritage, alone constitutes the forensic title denominated Partition of Heritage.

Is not partition of heritage (*dáyabhága*) termed distribution of inheritance (*dáyabhága vibhága*) *?* What use is there in such an incumbered definition? Yet there is no vain repetition; for it conveys the meaning of the term (*dáyabhága*) inheritance or partition of heritage. *The answer is;* no *such* objection can be made, since the *legislative* independence of the Sage must be acknowledged. Or so much is added to aid the perfect comprehension of the sense conveyed by the term heritage: for, since the partition which takes place in respect of partible property devolving from a father on his sons, is called partition of heritage, it follows, that such property is (*dáya*) heritage; and, since the term heritage is also used to signify property of which no partition is made, participation, not partition, is strictly intended.

Some consider the relative as employed in the seventh case substituted for the first. Consequently the sense is, "that partition, which is instituted, is partition of heritage." But others read, "*yat tu* or *yas tu*, but that," instead of "*yatra*, where or in which," and interpret the text similarly. The learned descendents of learned ancestors take the relative in the seventh

case, with a causal sense : the subject is the title of law which consists in partition ; and the word partition, which occurs in the text, is intended to justify distribution by a causal derivation *of the term :* consequently the sense is, 'that title of law, whereof partition is the element, and which is established as the cause and ground of a distribution by lots or the like, is called Partition of Heritage.' Partition therefore, as a title of law, bears an abstract sense ; and this well reasoned opinion is unexceptionable. Again ; the partition of heritage, or the heritage which is divided (according to the different opinions *mentioned*), is signified by the term Inheritance ; and that constitutes the title of judicial procedure. Such is the interpretation of RAGUNANDANA, JÍMÚTAVÁHANA and the rest.

But, in fact, that distribution, participation, or ownership of the paternal estate, (or wealth descending from the father in consequence of his death or the like, or, in other words, property of the deceased father,) which is established or acknowledged by the sons to vest in a certain owner, is a term of law relative to ownership. Consequently, from the relation of the term, ownership itself being the title of law, the property of the estate, which belonged to a deceased owner, being vested *in another* by reason of consanguinity, is inheritance.

Or the relative may be expressed in the seventh case with the sense of prop or support ; as in the example, "he resides with his preceptor :" and partition signifies allotment. Consequently the sense is, that ownership of heritage, in right of which sons make an allotment, is a title of law named Inheritance. *Ownership, as* the support of an allotment of the heritage, is a cause mentioned solely by way of illustration. Hence, even the ownership of heritage which is not divided is unexceptionably considered as inheritance ; and thus the text of BAUDHÁYANA, the rules of VISHNU (III and CCCCXVII) and other texts are truly explanatory of inheritance. This has been sufficiently discussed.

If partition, as a term synonymous with division, signify the separation of the integrant parts of the thing divided, would not the thing be destroyed ? If it signify disunion of *interests among* the brethren in respect of each other's property, no separation could be made of property connected with the property of another brother, even though the *individual* right be ascertained. *To this it may be answered,* the act of ascertaining the *individual* right, or the ascertainment of *a separate* title, is partition, or division ; for, on the death of the father, his right is devested, and a title vests in his son or other heir ; and in the case of two or more sons, each son has a several title to that property, which shall *thereafter* be received by him : but, since that is absolutely invisible, and cannot be perceived by the eyes or other senses, it is ascertained by lots or the like, and argued from logical inference alone ; that solely constitutes ascertainment : or the consequent act, such as distribution by casting lots or the like, is signified by the term partition.

But, if a single female slave, or one cow or the like, be the property left by the father, what should be the mode of proceeding, since a distribution by lots is not possible ? VRĬHASPATI has provided for this case (CCCLXVI 5). Such property must be apportioned according to the reason of the law, else it would be rendered useless. In the case supposed, all the heirs have a title to the single female slave. For instance ; on the death of one who leaves five sons, the eldest son has, in the first place, a right *to employ* that female slave during six days ; and afterwards the next born, during other

six days. In this and other modes their several rights may be adjusted; or lots may be cast, after executing a document for the regulation of periods.

Is the title to that female slave, which the eldest son possessed, devested after the expiration of those six days, or does it still subsist? On this doubt some lawyers remark, that many titles or proprietary rights over an individual, but which exist partially in respect of time,* were previously vested in the sons: these *rights* must be considered as vesting in those several persons, one after the other, at certain periods, which shall be subsequently settled by an umpire. In that case the award of such an umpire constitutes the separation of those several rights: and here the expression "were previously vested," obviates the supposition of repeated lapse and revival of property. Again; a right to that female slave subsists, connected with the ascertainment that it shall subsist *in full force* on those several days awarded by the umpire: and, since this right is described as partially existent in respect of time, it does not subsist *in full force* after the close of those several periods; like the faded colour of a jar; like class and sort, such as the generalizing of names or the like, *which may vary with the change of name;* and like the *temporary* absence of a quality partially existent. Hence, after the expiration of the several periods, the coparcener, *whose turn is past*, may not employ the female slave. Such is the opinion of JÍMÚTAVÁHANA.

Is property included in the seven categories, substance and the rest, or is it distinct therefrom? To this VÁCHESPATI BHATTÁCHÁRYA, grounding his opinion on the *Mímánsa* philosophy, replies: property is a certain faculty† subsisting in the several substances; but, according to the *Nyáya* philosophy, he adds, 'ownership is a relation between cause and effect, attached to the owner who is predicated of particular substances, and subsisting in the substance by connection with the predicable.' That alone is right: property consists not in the right of aliening at pleasure, nor is it a consequence *simply* deduced from positive law, which declares the right of aliening at pleasure; for that would be an identical inference,‡ in this manner; if there be property, then a man may aliene at pleasure, and property is the right of aliening at pleasure: or the law declares a power of aliening at pleasure, that which is possessed as property; here again is a confusion of premises and consequence. Hence 'SIRÓMENI says, in the *padárt'ha tatwa*, property is a distinct category. He considers it as a category distinct from the seven predicaments, because there is no argument by which it can be established to be a faculty, nor any argument by which it can be placed under quality and the rest. It exists in substance, such as gold, silver, cattle and the like.

But SRÍ CRÍSHNA TERCÁLANCÁRA holds, that as property abides in substance, so it does in quality also. For instance; the precept, "consecrate a black bull," and similar phrases, suggest the consecration of a bull, to which

* A term of logic, *avyápyavritti*, by which I understand partial existence. It is distinguished into predicates partial in respect of place, and partial in respect of time. T.

† *Sanscára*, faculty; enumerated by logicians among qualities; as, faculty of rapid motion; pretention of ideas, or faculty of recollection; faculty of continuing the motions necessary to life; and many others. I translate it faculty, but this must be taken in a limited sense. T.

‡ '*Atmásraya*, identical; a proposition not legitimate, because the predicate is the same with the subject; or an inference not legitimate, because the conclusion rests on itself, or because the effect is referred to itself as a cause. T.

the quality of blackness is an attribute. Now consecration cannot take place without property; therefore property is acknowledged in respect of that to which the quality is attributed: and consequently property is proved to exist in the accident or black colour, as well as in the subject or bull. As it is said, the father is arrived, accompanied by his son; *in which example arrival is affirmed both of the accident and subject.*

That is wrong; for property in no other instance appears to abide in quality. In the example proposed, "consecrate a black bull," as in the phrase "a man carrying a staff and wearing earrings;" there is no difficulty in apprehending the consecration of a bull, with which the quality of blackness is contemporary. Consequently, the consecration of the bull, and the contemporary existence of the quality of blackness in the bull, are required by the precept.*

Logicians, admitting the numerosity of the bull changed by growth, diminution, and the like, (*or in other words, denying the permanent identity of a body subject to change,*) and apprehending the consequent difficulty from establishing various property, affirm ownership to be vested in the man; and the predicable, consisting in the connection of essential properties, is acknowledged to adhere to the bull, which may be of various colours.

Whether property inhere in the thing, or ownership in the man, what is the cause of property? VÁCHESPATI BHATTÁCHÁRYA replies, 'acquisition 'is the sole cause of property: and that acquisition is the act of the acquirer, '*earning wealth in such modes as are* ordained by the law. This, again, is of 'three sorts: in some instances it is corporeal, as agriculture, commerce, or 'the like; in others it is verbal, as teaching the sacred sciences and the rest; 'in others again, it consists of mental design or volition, as acceptance of 'gift, embezzlement of deposits and so forth. But, in the case of heritage, 'since a law declares that "in some instances acquisition is by birth," and 'the text of GÓTAMA expresses "even by birth alone a man may gain owner-'ship," the birth of sons and the rest constitutes acquisition, through the 'medium of the connection of filiation: that also is coporeal.'

Acquisition of various kinds becomes the cause of property *single in its kind;* as grass, flint, or touchwood,† and the *igniting* gem, are causes of fire. As flame may be produced from an igniting gem even without grass, though fire be uniform in its kind, or without the gem or grass, from very inflammable wood, and consequently grass and the rest become causes of fire *single* in its kind; so do agriculture and the rest become causes of property *single* in its kind. Thus grain and the like first become the property of him who raises them; and next, of the purchaser, donee, or the like: in these cases, the property of the original owner is only devested by his own volition; and that volition proceeds from the acceptance of a price, from the wish of moral purity or the like, from service and so forth, or from solicitude for the accomplishment of his purpose. In these cases, property vests in the purchaser through the payment of the price and acceptance of the chattel transferred:

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* Men of the servile class are enjoined to dismiss black (literally blue) bulls on certain occasions. The higher classes, on the same occasions, dismiss bulls of a reddish white colour. T.

† The word *aran'i* is subsequently explained a particular sort of wood, and should signify very inflammable wood, from which fire is obtained by attrition; but the same term is frequently used for a flint. T.

it vests in the donee solely through acceptance of the chattel; for no otherwise does he acquire it: it vests in servants and the rest, through the medium of the master's volition, in consequence of the performance of certain work; or the acceptance of the money may be the sole origin of property vesting in servants and the rest. In case of inheritance, birth alone is cause of property; and that birth is a particular relation of body, not a relation taking place at the first instant of procreation.

May not a son have property in the wealth of a living parent? Let it not be answered, this is admissible; for it would contradict the law: **Dévala** (V) declares, that, while the father lives, his son have no ownership of his estate. If this be proposed, the argument is denied: **Dévala**, declaring the want of ownership while a faultless father is living, in effect assigns the death of the father as a *mediate* cause of property vesting in his sons; by propounding the term "faultless," he suggests the degradation of a father as a *mediate* cause of transferring property to the son. *But*, since both these are inconsequent; since it is difficult to prove the cause from their producing a devesture of property; and since it is a false conclusion in logic,* because the same may be truly assigned as the cause of another effect; therefore, omitting these, the *immediate* cause is in effect assigned in the devesture of the father's property.

That being the case, would not the property of the father's estate *repeatedly* vest every instant in the son, after the death of his father; for the devesture of the father's property, and filiation, *or relation of the son to the father*, subsist continually? Let it not be answered, that there is no objection, since the cause may be assigned in the devesture of the father's property, which may be supposed *to take place* at the moment of *his son's* birth: the possible title of the son to wealth bestowed on priests by the father in his lifetime would be imperfectly barred. If this be alleged, the answer is: since property vests in the purchaser through the price settled, and through *his* acceptance *of the bargain*, even though the chattel be not delivered; and in the donee, through *his* acceptance *of the gift;* property is established to be an impediment to *concurrent* property; hence, there could be no property arising every instant, and rolling like the waves of a stream: and the chattel being delivered by the father, no right is vested in the son, since it is resisted by the father's declared will, "this shall belong to the priest." In like manner, even in the particular case of usucaption, when the father suffers land to be possessed by a stranger during twenty years, since the property is devested, no right is vested in the son; for property dependent on relation to the father, is resisted by adverse possession suffered by that father. Again; since the title of a daughter and the like is resisted by the intervening title of a son and the rest, which is dependent on affinity, daughters and the rest have no right to the patrimony if a son be living. No other cause *of succession* should be established besides the devesture of

* *Anyat'hásidd'hi*, in logic, disproves a cause. Cause is what necessarily precedes; but every thing which has preceded, is not the cause of the event considered: in the definition of cause, it is therefore a requisite condition, (in the language of *Hindu* dialectics,) that it be not true of something else. This may be best understood from the five heads into which it branches: 1st, that by which the more immediate cause is inferred, or, 2nd, by which it becomes perceptible (as the abstract essence, or the colour of a thing); 3d, which is already assumed as the cause of another *unconnected* event; 4th, what is assumed as the cause of the immediate cause; 5th, what did not necessarily precede the event considered. T.

the father's property; and the text of DÉVALA is a lax expression *of the consequence*, when a cause subsists for such an effect. For instance: if no property vest in the son while the father's title subsists, then surely a son has no ownership while the father is living.

JÍMÚTAVÁHANA affirms, that acceptance is not the cause of property; were it so, the accepter, performing the act which confers property, would be the giver, *which is absurd:* but gift alone, like the annihilation of the party's own property, becomes the cause by which the property of another is produced. Nor should it be argued that receipt is acceptance; that acceptance consists in making that his own which was not his own: that this operation is an act, and that act is the receipt *of the thing given:* before receipt, the chattel was evidently not his own; but when receipt has past, it has become his own: receipt alone is therefore the cause of property. For, *to this it may be replied*, the title effected by acceptance consists in the power of aliening at pleasure; because, a gift being made to an absent donee, he does not appropriate it at pleasure, even though property be vested in him, since he is ignorant of his right. When the gift becomes known to him, he then knows, "this is mine;" that alone is acceptance: afterward, knowing it to be his own, he appropriates it at pleasure, without needing the assent of another. Nor should it be alleged, that, acceptance being a mode of acquisition, as recorded in the text, "by sacrifice, by teaching the scripture, and by acceptance of gifts, a priest may earn wealth," it follows that acceptance generates property. "Earn" does not here signify generate property, but induce an act which does generate property, such as the surrendry on the part of the giver. For, as *the priest*, by interpreting the *Véda*, or assisting *another* to sacrifice, disposes the giver to bestow a present, and obtains the surrendry from him; so likewise, since the giver entertains the notion that *the priest* will accept it, he, who yields future acceptance connected with that notion, effects the surrendry from the giver; else that notion could not exist, since there would appear no object of it. May not "earn" signify generate property? That sacrifice and the rest generate property, is admitted. Should it not be likewise affirmed, that acceptance, howsoever involuntary, generates property? Even the accepter would be the giver; for the donor is he who produces such an effect as the investiture of transferred property, and that description would be applicable to the donee, *which is absurd*. Let it not be alleged, that the act of the giver is not the efficient cause of property vested in a person other *than the former owner*, because there is no authority for considering gift as the efficient cause of property vested in another. MENU declares donation alone to be a cause of property vested in the donee; "gift is the cause of ownership." Such is the opinion of JÍMÚTAVÁHANA.

VÁCHESPATI BHATTÁCHÁRYA holds, that MENU mentions gift as contributing to the property vested in the donee, and that through the devesture of the property held by the former owner. But acceptance is a cause of property, under the authority of the text cited by SÚLAPÁNI (and quoted in the preceding comment.) Sacrifice and teaching the *Véda*, mediately causing property, are truly means of acquisition: but future acceptance cannot be a mode of acquisition, because there can be no actual object considered: and the foregoing argument is thus weakened. Accordingly, should a donary be given, intended for priests in general, any one priest may possess it; else, since there is no ground for selection, should one take a chattel owned by all priests, he must distribute it to all, like joint-pro-

perty. Nor can it be established, that property vests *originally* in him alone who subsequently takes it. Of this there is no proof. Nor should it be objected, that the seizure of a present intended for a priest residing at *Cáśí* would be no theft. This may be unexceptionably held admissible. Or, terming it seizure of another's property, there is no objection to consider as theft the seizure of a chattel intended to become the property of another, as well as the seizure of a chattel actually possessed as property by another.

DHAUMYA:—On failure of the proper object, how shall a present be disposed of, which was bestowed on an absent person? Let it be delivered to kinsmen sprung from the same original stock, or, on failure of these, to his distant kindred.

From this text, which enacts, that a chattel given away, even though it have not been accepted, must be delivered to the kinsmen of the person intended, it appears that property is conferred by mere gift without acceptance; else, why should the kinsmen of the person intended be alone mentioned? Consider the reverse as true; for, did property vest in the person intended through gift alone without acceptance, then it must of course be taken by a son or other heir, because it has become *a part of* the patrimony: and for what purpose has the text of DHAUMYA been propounded? A present made for the benefit of a deceased *Bráhmana* erroneously supposed to be living, must be delivered to his son or other heir: is not the text designed to convey this precept? What follows from this? For *the argument supposes that* property was vested before acceptance. Therefore, should a present not be delivered to him for whom it was intended, the law shows the gift to be imperfect: hence it must be delivered *to complete the gift*. In answer to the question, 'to whom should it be delivered if he died before or after the donation?' The text of DHAUMYA ordains, that it shall be delivered to the son or other heir, in like manner as donaries or the like given in honour of deities must be delivered to priests and the rest.

Since the text cited in the *Malamása tatwa** declares the giver guilty of theft, if gold given, but not delivered, be lost *by his fault*, and not made good, and since theft consists in the seizure of another's chattel, a chattel given away becomes the chattel of another even before his acceptance: being acknowledged to belong to the donee, surely it must evidently follow that property was vested in him. It is so after the chattel has been given: *but* if it immediately become the property of the donee, then the seizure of it would be truly a theft, under the text which describes theft in general; and the enunciation of this text would be superfluous. Consequently this text intimates a figurative theft, considering a chattel surrendered for the benefit of another, though not yet accepted *by him*, as similar to property vested in another. Admitting the property of the donee, since the giver has not seized, *but only lost*, the chattel, the definition of real theft is inapplicable, even according to your opinion; therefore, seizure and theft, in this place, are both figurative.

If any thing have been given away by a donor for the benefit of a priest, it is ordained that it shall be delivered to his sons should the donee die before delivery; shall it be delivered to the son alone, or to all the sons and grandsons in the male and female line, and the rest? or, is the object attained by delivering it to the sons of daughters and the rest, even though a son of

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* See Book I, Chap. II, Sec. III, Art. III.

the donee be living? To this question it is answered, the donor must deliver it, in the order of proximity, to the remoter heirs respectively, on failure of nearer heirs, as suggested by the text of DHAUMYA; and that order is similar to the sequence of inheritance.

Is not the sequence different from the series ordained in the case of inheritance, since the text states this order, "kinsmen sprung from the same original stock, and distant kindred:" this order alone should therefore be admitted: in the first place, it should be delivered to any one kinsman sprung from the same original stock; next, on failure of such, to distant kindred? No; for that sequence is also unacknowledged by the text of NÁREDA (Book I, v. CCXXX). Consequently, the order of inheritance should alone be admitted; for this chattel is similar to one which had become the father's property. In the first place, it should be delivered to the son, grandson, or great-grandson; on failure of these, to the widow. According to the opinion of those who contend for property vested before acceptance, this must certainly be established.

If the donor delivered it to one son alone, and other sons be living, then, since the accepter alone made the acquisition, the rest would have no title; *or*, even though all should have a title grounded on the original intention in favour of the father, he to whom the chattel is delivered would share a double portion, because he gained the property. Let it not be said that this is admissible: it contradicts JÍMÚTAVÁHANA and the rest; for, according to his opinion, property is acknowledged prior to acceptance; and all the sons shall therefore receive equal shares, since that chattel is a part of the patrimony. If this be proposed, the answer is, he shall be compelled to give it up, if he receive such a chattel without distributing to his brothers their shares, in like manner as when such a chattel is taken by a stranger. But if he fraudulently take it *as a present to* himself, not considering *it as a gift to* his father, it is similar to a thing given to many persons, neglected by the rest, and received by one.

Here it should be observed, that the donor ought to deliver the present to all the sons *jointly*; else the object *of the gift* would not be attained. Hence, he should not deliver it to a daughter's son, if a son be living. In like manner, should a stranger seize on the road a chattel sent by one person to another, he shall be punished as a robber, and the chattel must be recoverable from the thief by him for whom it was intended.

Consequently, in the case of gift, acceptance alone generates property. Accordingly an inanimate being can have no property, through the want of the requisite acts, from the effort with which an acquisition originates, until *final* acceptance. But, according to the opinion of those who maintain property vested by mere gift *without acceptance*, a thing which is given to a deity, whose essence is a text of scripture, becomes the property of that deity. Let it not be asked, by way of objection, what is the conclusion of those who maintain the animation of deities? The apparent difficulty is reconciled, although deities, according to this opinion, be animated, by not admitting their acceptance of gifts. In like manner, insects and the rest have no property in water and other things consecrated for the benefit of all beings.

Surrendry, intended to convey property to another, and attended by the effect of annihilating the property of the party himself, is gift. The accepter so not the agent in that act; therefore he is not the giver (*an absurd consequence objected by* JÍMÚTAVÁHANA). Let it not be said, the literal sense of

the verb "give" is obtained by including in it the consequence produced of creating property vested in another. That is prolix; for *the definition of* consequence or effect is prolix in comparison with that of intention or special object. Nor should it be objected, that, if this be the case, it should be said, 'attended with the object of annihilating his own property;' why insert "effect?" Were it so, consequence not being included in the sense of the term, "give" would be an intransitive verb; since it could have no subject suffering the effect denoted by the abstract sense of the verb.* Nor should it be objected, that there is no ground for selection; the effect might be affirmed either of the giver's own property annihilated, or of another's property *created*. The law showing that gift annihilates the giver's own property, there is a ground for selection. Nor should it be alleged, that the words of MENU, "gift is a cause of ownership," from a law which shows the production of property vested in another. The difficulty is removed by inferring the production of property vested in another, through the medium of the devesture of property held by the former owner. Or, be it so; the subject may consist solely in the object, like the phrase 'he knows the jar.' Consequently the verb "give" signifies *an act of* volition, to which the previous annihilation of the donor's own property is attributive, and which intends *the conveyance of* property to another: or it signifies surrendry effecting the investiture of property in another, after annihilating the rights of the former owner. Accordingly the phrase "he gives a cow," appears to signify, 'cancelling his own property, he makes the cow appertain to another.' The accepter is not the agent in such a gift; for he is that other person, and he does not cancel the former property: and *thus* "cause of ownership," in the text of MENU, bears a literal sense. Hence the objection, that gift, as mentioned by MENU, would occur in the case of neglect occasioning the property of another through the medium of annihilating the party's own title, is obviated; for, in this case, *neglect* becomes an immediate cause of property vested in another. Even in the case of sale and the like, there is no objection to this use of the verb; 'having received the price, he gives the cow.' In like manner, the verb "give" is properly used for the payment and advance of debts, "if the time of payment be not expressed, the debt shall be paid (*literally* given) on demand" (Book I, v. CLXVI); and, "let no man lend (*literally* give as a loan) any thing to women, to slaves, or to children" (Book I, v. VIII). But in the phrase "give food to a twice-born man," and in similar expressions, the verb signifies gift alone: and that may be known from the epithet, *or circumstance*, descriptive of a moral purpose, not indicating sale and the like. From the insertion of surrendry or relinquishment *in the definition of gift*, the phrase "he gives *or leaves his estate to his sons*," cannot be used when a father dies, or becomes an anchoret. Yet, if the father at the point of death, or becoming an anchoret, declares, "so much wealth is left by me, let it belong to my sons," it may in that case be said, he died, or became an anchoret, after giving *or bequeathing* all his property to his sons. Accordingly, in stating the etymology of *dáya-bhága* or inheritance, JÍMÚTAVÁHANA and others *thus* derive the word *dáya* heritage, that which is given *or bequeathed* (*díyaté*). This, and the phrase "he gives *or bequeaths*," are figurative; for they are similar to the investiture of property in another, after cancelling the property of the *former owner*, who is deceased naturally or civilly: there is not in that case a surrendry made by the deceased and the rest. RAGHUNANDANA observes, there was

* Definition of transitive verbs.

not, on the part of the deceased, a surrendry effecting the annihilation of his own property, and consisting in his declared will, "this is no longer mine." The same author explains surrendry, declared will; and that signifies desire or intention.* All this has been stated in conformity with the opinion of VÁCHESPATI BHATTÁCHÁRYA.

It differs from the opinion of JÍMÚTAVÁHANA, in maintaining that the right to a chattel, which is given, is not vested before acceptance or approbation: this is deduced from minute reasoning; and the argument is equal. Consequently, assent is signified by the term approbation; as in the phrase, 'philosophers of the *naiyáyica* school acknowledge, a supreme ruler different *from the deities of mythology*.' The phrase 'he accepts the chattel,' signifies, he assents to the property conferred on him by the donation, and does not neglect *or refuse* it. It may be also affirmed, that acceptance is a mode of acquisition through the medium of request; but, in the case of an unsolicited gain, there is no difficulty, even though acceptance be not considered as acquisition.

Granting this; may not a man appropriate at pleasure an offering made by any person on the bank of the Ganges, without a declared acceptance in this form, "this shall be mine," but *merely* thinking "this is mine?" What objection is there? Or, *if objections be sought*, the appropriation of an offering made by another, without previous acceptance, is indirectly forbidden by a text; "acceptance should be avoided on the bank *of the river*." This has been sufficiently explained.

Property dependent on relation to the former owner, in that chattel of which the ownership has expired, is heritage, a word deviating from its etymon. So JÍMÚTAVÁHANA *defines heritage*. The condition, "dependent on relation to the former owner," obviates the possible use of the word heritage in *speaking of* gift and the like. That relation, originating from birth, study, marriage and so forth, is filiation, fellowship in study, conjugal union, or the like. The phrase "of which the ownership has expired," obviates the use of the term heritage, under the texts which describe the concurrent property of the wife during the life of her husband (CCCCXV &c.) ŚRÍ CRÍSHNA TERCÁLANCÁRA.

Since property resists concurrent property, how can a wife have any title to the estate of her living husband? The objection is ill founded; for, acknowledging the death of a father and so forth to become severally causes of property immediately subsequent, he does not admit the *general* resistance of one property to another. But, according to that opinion, it may be affirmed that marriage would unavoidably resist a property which was different from that of such a wife, and which would annihilate her former property. VÁCHESPATI BHATTÁCHÁRYA does not admit a property then vested in the wife. This will be subsequently explained. According to his opinion, the words "of which the ownership has expired," need not be inserted.

Such is heritage (*dáya*); and of this a partition (*bhága*), distribution, right, ownership or property, must be understood according to the various opinions, as already noticed: and the verb *bhaj*, divide, occurs in the text of YÁJNYAWALCYA (CXIV) with the sense of right or title. Accordingly MENU also expresses, "learned the law of inheritance (*dáyabhága*)." Having declared the simple right of succession (Ch. IX, v. CIV), and

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* *Sancalpa*, thus explained as signifying will, seems also to be the nearest term for testament. But strictly, a last will and testament is unknown to the *Hindu* law. T.

noticed cohabitation *of parceners* (from v. CV to v. CXI), he proceeds to the mention of partition (v. CXI). In those texts, "after the death of the mother" (v. CIV), alludes to the several property of the mother: accordingly CULLÚCABHATTA remarks, on the expression "paternal estate," that sons also succeed to the maternal estate. BAUDHÁYANA also simply declares the title of sons to succeed to the paternal estate (III).

JÍMÚTAVÁHANA remarks, that the casting of lots and the like, for the several rights of two or more sons to their respective portions, (which rights were *previously* unascertained, since nothing determined that such a chattel belonged to such a person;) ascertains the severalty, *which may be expressed in these words,* "this wealth belongs to this man:" that ascertainment of severalty, namely the casting of lots or the like, is partition. But RAGHUNANDANA says, after the devesture of property predicated of the sons collectively, in respect of the collective wealth which devolves on them after the death of their father, property is severally predicated of each son in respect of each chattel, *as determined* by lots or the like: or the casting of lots, or other act which produces that consequence, is partition of heritage. JÍMÚTAVÁHANA conceives, that, after the decease of the father, and after the consequent devesture of his property, a right is vested in his sons, by reason of the connexion of filiation and so forth; and this follows from the text of BAUDHÁYANA. Since the property of the sons can only arise after the devesture of their father's property, such devesture *is necessarily inferred:* now there is no argument to prove the devesture of the co-ordinate property of sons, and rise of another *several* property; although the texts, which notice partition, do suggest that *several property*, it would be difficult to establish the failure of one property and rise of another: therefore the property of each is established in that which will become his by lot; for his right, being imperceptible to the senses, cannot be ascertained otherwise than by casting of lots: this alone constitutes partition. But RAGHUNANDANA thinks that the casting of lots must be explained by logical inference: as fire is ascertained from smoke by this argument, 'without fire there can be no smoke; for what else causes it?' So, without vested property there can be no casting of lots in the name of the proprietor, *for* there is no *other* proof of it. In the case of ordeal, as a natural efficacy is attributed to fire by this rule, 'fire burns the guilty alone, not the innocent;' so, attributing a natural efficacy to lots thrown, should it not be established, that the lot falls to each for that of which he had the property? No; for, in the case of trial by ordeal, the texts of Sages establish, that the innocent remain unhurt; but, in this instance, there are no grounds for the inference. If it may be said, that is established to avoid tedious difficulties, still it is again a tedious difficulty to prove such natural efficacy attributive to lots and the rest. In like manner, to obviate the property of all *the heirs* in the whole estate, (which might be supposed, since their connexion was equal when the father deceased,) it is most difficult to establish an impediment to such property, because that other individual property is previously negative,* *or has not yet existed.*

Again; it is universally agreed, that the acquirer shall have two shares, and any other heir one share, of what has been acquired by a

* *Prágabháva:* antecedent privation. Privation is relative or absolute; the last is of three sorts: antecedent privation, affirmed of what has not yet been; annihilation, affirmed of what has ceased to be; utter privation, affirmed of that which now is not, and in which past or future existence is not considered. T.

brother employing one of two horses left by his father. On partition of the original wealth, should that horse fall by lot to him who acquired *this new wealth*, then, according to the opinion of those who contend for distributive property *severally vested in each individual during coparcenary*, that horse already belonged to the acquirer; why then should another brother participate in the wealth so acquired by him? But if the horse be obtained by a parcener other than the acquirer, the wealth so acquired ought to be equally divided; for it is gained by the exertion of one parcener, and by the labour of a horse belonging to the other. On this SRÍ CRÌSHNA TERCÁLANCÁRA remarks, that there is nothing inconsistent with practice, because the phrase "employment of common property," intends only wealth, of which the *several* property is undetermined. Of these two opinions, that which is maintained by RAGHUNANDANA, who contends for co-ordinate property, is confirmed by HERINÁT'HA, by the author of the *Mitácshará*, by VÁCHESPATI MISRA, BHAVADÉVA and others. This very opinion is indirectly admitted even by SRÍ CRÌSHNA TERCÁLANCÁRA.

Should any one brother sell the female slave on a day which falls within his allotment (CCCLXVI 5), may the purchaser afterwards require the labour of that slave on the days allotted to other brothers? To this question the answer is, when a sale is made, the purchaser has a property similar to that which the vender enjoyed: hence, the purchaser can only obtain *the labour of the slave* on those days of each month which were allotted to the vender in proportion to his share. Accordingly, when a principality is sold, the prince has property entitling him to receive revenue; but the property of the occupant, entitling him to enjoy the produce *of the land*, subsists in full force: when the produce is sold by the occupant, the purchaser acquires a right to enjoy it, but the king retains his title to receive revenue. Hence, he who cultivates land for which he pays revenue to the king, and who enjoys the produce obtained from that land, is acknowledged to possess property as cultivator *of the soil*; if he sell the land, the purchaser acquires similar property, in right of which he enjoys the produce after paying revenue to the king. The cultivator is not destitute of ownership; for that would be inconsistent with practice. Consequently, various concurrent rights to one and the same thing being admitted, it must be established, that property is an impediment to other property of the same nature. This has been also stated by SRÍ CRÌSHNA TERCÁLANCÁRA, *in these words*; 'for those two concurrent rights of the same nature are incompatible.'

ART. II.—*On Succession of Sons.*

III.

BAUDHÁYANA:—Male issue by males *as far as the third degree* being left, the estate of the father surely must go to them.*

This text of BAUDHÁYANA propounds the succession of sons to their father's estate: and that succession only takes place after their father's demise; for MENU declares, that sons may divide the paternal estate after the death of the father.

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* See the context at v. CCCXCVII.

IV.

MENU:—After the death of the father and the mother, the brothers, being assembled, may divide among themselves, in equal shares, the paternal *and maternal* estate; but they have no power over it while their parents live, *unless the father choose to distribute it.*

Here their title is equal; that is, a deduction of a twentieth part or the like is allowed by other brothers, through affection, and to preserve due respect, because elder brothers and the rest are venerable. CHANDÉSWARA, CULLÚCABHATTA, VÁCHESPATI MISRA, JÍMÚTAVÁHANA, RAGHUNANDANA and the rest observe, 'by the term "divide" partition is intended; from ordaining partition after the death of the father, it follows that ownership vests after his death, else why should they not divide *the estate* earlier?' Equal partition is here mentioned, supposing an eldest brother who is deficient in virtue, or who does not claim a deduction; for, the deduction of a twentieth part concerns an eldest brother endued with virtue, or intends an eldest brother claiming that deduction. Such is their meaning. UDAYACARA remarks, on the word 'equal,' that an equal partition should be made, after first deducting a twentieth part *for the eldest brother*. HELAYUDHA and *Párijáta* read *saha*, with, instead of *samam*, equal; and "with" is expounded in the *Párijáta*, mutually, *or among themselves*.

"Paternal," or parental; this derivative, from a term expressive of both father and mother, (the last being understood,) signifies paternal and maternal. It is so expounded by HELÁYUDHA, CHANDÉSWARA, VÁCHESPATI, BHAVADÉVA, and others; and CULLÚCABHATTA entertains the same notion. A distinction in regard to the succession of sons to their mother's property will be subsequently mentioned. 'Others, says CHANDÉSWARA, 'consider "paternal," or parental, as also signifying definitively what 'descends from a paternal grandfather; for partition is also suggested in 'that case' (CCCLXVIII). We hold, that, as "distribution of the paternal estate instituted by sons" (1), is merely illustrative of any relation, so are the terms of the present text (IV), "after the death of the father and the mother," and, "the paternal estate:" consequently, it is only after the death of him whose estate may be divided as heritage, that partition is made. Such is the meaning of the text. But JÍMÚTAVÁHANA, RAGHUNÁNDANA, and others, argue, from the expression "*after the death* of the mother," that 'partition among sons, while their mother lives, is immoral; as is intimated by the text of SANC'HA and LIC'HITA (XVII).' They consider the text of SANC'HA as signifying, that, since sons are not their own masters while their mother lives, a partition ought not to be made without her consent, for she is most venerable; and the text of MENU must be also adduced for the same purpose. Here some lawyers infer, from the phrase "they have no power over it while their parents live," that they have a title in the estate while the father lives, but cannot appropriate it at pleasure without his command. But JÍMÚTAVÁHANA has said, 'there is no proof of property then vested in sons.' DÉVALA expressly declares it:

V.

DÉVALA:—After the death of the father, sons may divide his estate: but they have not ownership, *or full dominion*, while a faultless father lives.

By the mention of faultless it is intimated, that, should a blameable father be living, sons have ownership of his estate: it follows, that property is devested through faults. The very same exposition is delivered by RAGUNANDANA and others. NAREDA may be quoted in answer to the question, what defect?

VI.

NÁREDA:—The father being degraded, or become an anchoret, or having resigned, or deceasing naturally, his sons may divide his estate.

"Degraded;" fallen *from his class.* RAGHUNANDANA.

Consequently, even degradation is suggested by the word defect.

"Become an anchoret;" quitting the order of a housekeeper.

"Having resigned;" though his title subsist, having no wish to retain the property vested in him. RAGHUNANDANA.

For this shows that sons have property in their father's estate, through his resignation or the like. JÍMÚTAVÁHANA.

But CHANDÉSWARA explains the term, 'void of desire for *worldly* concerns.' He reads the text *nivrittè vá'pi ramaṅè pitary-uparata-sprihè*,* instead of *vinasht'è vá'py-ásarané pitary-uparata-sprihè;* and expounds that reading 'capable of connubial intercourse, but refraining from it.' MISRA delivers a similar exposition. HELÁYUDHA reads *nivrittè vápi maranát:* that has been expounded by JÍMÚTAVÁHANA as an epithet of the subsequent term, 'exempt from disease, (that is, alive,) *but resigning.*' Another reading is approved by the author of the *Pracáśa*, but is not noticed by JÍMÚTAVÁHANA. In his opinion, the devesture of the father's property, in the case of resignation, is expressly declared. According to CHANDÉSWARA and others, the same must be deduced *from the premises.* But, according to RAGHUNANDANA, the right subsists even in the case of one who ceases to desire property.

There is a cessation or failure (*uparama*) of affection (*spriha*) or desire for worldly concerns. Now that occurs continually, for the duration of wish or desire is limited to two moments; it must therefore be affirmed to be the cessation of final desire. Such being the case, a father has at first withdrawn from *temporal* concerns; and having thus resigned *worldly* affairs, he afterwards again desires *temporal* concerns: in such a case, is the father's resignation *irrevocable?* In answer to this question, the same author observes, that property being devested through abdication, cannot be revived by subsequent desire. He thus defines a resignation adapted to this purpose: 'annihilation of desire, not contemporary with antecedent privation of *any* desire contemporary with property, is resignation.' Consequently, so many wishes as passed previous to abdication, as well as antecedent privation of future wishes, were contemporary with property; for the right was not devested, since it had not been then abdicated: the wish which is not contemporary with such antecedent privation, is the last of wishes anterior to abdication; the cessation of that is resignation: and in like manner, no wish is again formed in the interval which follows such final wish for worldly concerns; abdication takes place thereafter: whether desire will or will not be subsequently revived, partition may be made by sons when such desire has *once* ceased. Thus some explain RAGHUNANDANA's meaning.

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* With this reading it forms the last hemistich of the text subsequently cited (XCVIII).

That is not *tenable;* for sons cannot make a partition of their own accord while the father's right of property subsists: having resigned, and withdrawn from worldly concerns, he forms no wish of partition; the distribution cannot be that which is made by the father; and, without abdication, it cannot be known that the last wish for worldly concerns has been formed. In fact, resignation annuls property, and it is ultimately the same with abdication; for the cessation of wish for worldly concerns, accompanied by a declaration in this form, "henceforward I will not act in *worldly* affairs," annuls the right of property: afterwards, when four years have elapsed, if he again desire worldly concerns, still property is not revived. Again; since there is antecedent privation of that wish which will be formed after the lapse of four years, the epithet "contemporary with property," has been subjoined to deduce resignation from the cessation of desire contemporary with that declaration. Again; since the failure of property takes place at a moment subsequent to the cessation of desire contemporary with that declaration, it is said, "even though the property subsist," to authorized partition at the moment when desire ceases. This some allege: but it is unsatisfactory, for it is liable to the same objection. Hence the opinion of JÍMÚTAVÁHANA and the rest seems accurate. "Having resigned," explained as signifying void of wish for the use of women, corresponds with the text, "when their mother is too aged to bear more sons" (XX), even though the *present* text be not read *nivritté vápi ramané,* or refraining from amorous delights.

However, some lawyers think partition among sons authorized by law, even though the father's title subsist, when it is anyhow known that the wish for worldly concerns has utterly ceased. But the father's property does then subsist, since he has not abdicated by a declaration in this form "it shall no longer be mine," nor has deceased, or otherwise vacated his estate. Let it not be objected, that no partition could be made while the father's property subsisted. The law has authorized partition even in the case of one who ceases to desire property; and by that term is signified the utter failure of *such* wish. But if the owner, having entertained no wish during a certain space of time, afterwards desires worldly concerns, there was no resignation. After withdrawing his affection *from things of this world,* if he abdicate his estate in this form "let this be no longer mine," then indeed property is devested by abdication: and afterwards, even though *temporal* inclinations revive, property is not renewed. With this view it is said, "contemporary with property." The resignation can only be known from the declaration of the party. Thus the opinion of RAGHUNANDANA is justified. Abdication is comprehended in the text, by considering the terms as illustrative of a general sense; or included under the term "anchoret," explained in the same manner in which the text of HÁRÍTA (XXIII) is expounded by the author of the *Pracáśa;* living on the wealth and under the rule of his sons, without becoming a recluse according to the *Véda.*

In the case of degradation, forfeiture of property must be understood when the offender is averse from expiation; for the gift of their whole estate is recorded as an expiation for degraded persons. RAGHUNANDANA, ŚRÍ CRÍSHNA TERCÁLANCÁRA, and others.

But VÁCHESPATI BHATTÁCHARYA holds, that a degraded man, and an anchoret, only forfeit property previously vested *in them;* else the laws which forbid the receipt of presents from a degraded man, and which show the succession of heirs to the estate of a (*sannyási*) or devotee in the fourth

order, would have no authority. Again; the right to former wealth being forfeited, even though he be not averse from expiation, that expiation may be nevertheless accomplished with money subsequently begged from sons or others; and it cannot therefore be said that the expiation can no otherwise be accomplished.

Here it should be noticed, that, if the property of a degraded man be devested, even though he be desirous of expiation, he does not, after performing penance, become owner of wealth, his right to which was forfeited at the moment of degradation: for there is no argument to prove ownership then *revived*; and to hold it admissible, would contradict approved usage. Consequently, *even* in the case of aversion from penance, degradation is the *sole* cause of forfeiting property which was vested before the loss of rank; and this is founded on the inconsistency with approved usage, *which is objected to the contrary inference.* In the case of a recluse likewise, abdication solely annuls property: retirement cannot be established as an independent cause of annulling it. "Or the father deceasing naturally, his sons may divide his estate" (VI): by mentioning partition among sons after the natural decease of the father, it is cursorily intimated by NÁREDA, that property is immediately vested in them.

VII.

SANC'HA and LIC'HITA:—Since partition of the estate takes place after his decease, sons cannot divide it while the father lives, even though it were acquired by them independent of him; they have no power *to make such a partition,* since they are not their own masters in respect of wealth or religious duties.

"After his decease;" after the death of the father. "Partition;" division of heritage. The word "only" cannot be here supplied; since partition is seen *in practice,* even while the father is living, by his choice: may sons therefore divide the estate while the father lives? The Sage replies, "sons cannot divide the estate while the father lives:" they cannot then divide it without his consent. But some expound the text, *by* completing the cause assigned; 'since sons are only entitled to the heritage when their father is deceased, therefore they shall not divide the estate while he lives.' "Acquired independently of him:" this is explained in the *Retnácara,* 'acquired by united efforts in science or the like, independently of the father.' The meaning is, that the term suggests this sense; 'acquired by them independent of their father.' To satisfy the question, how can any thing be acquired independently of him? the commentator adds, by united efforts in science or the like. Yet the same must also be admitted without united efforts: we cannot determine what is the use of this insertion.

VIII.

HÁRÍTA:—While the father lives, sons are not independent in respect of the receipt, alienation, and recovery of wealth; but if he be prodigal, absent in a remote country, or afflicted with disease, let the eldest son manage the affairs.

"Receipt of wealth;" taking common property without reference to the father. The *Párijáta* expounds it 'acquisition.' Consequently, without the assent of his father, a son should not do any act for the acquisition of

wealth. He is therefore not independent in respect of property then acquired: that is, the present text has the same import with the text above cited. "Alienation;" gift. "Recovery;" obtaining money from the hands of a debtor. In respect of these things, sons are not independent; they are not capable of acting without their father's assent. "Prodigal;" giving *money* away for his own pleasure only; disposed to make gifts on the sole suggestion of his own will, without attending to the gain or loss of merit and riches. 'If the father be such' must be supplied in the text. Such is the exposition approved by CHANDÉSWARA. The mention of management intrusted to the eldest son when the father is prodigal, shows his superior authority above the rest in respect of their affairs: no other can oppose the owner of wealth who gives it away at his own pleasure. Yet, it must not be supposed that the eldest son's management only is ordained, not opposition to prodigal waste. Since management intrusted to the eldest son, being mentioned, shows that the father is deprived of the management, it follows that the father has not the effects in his power. The author of the *Pracáśa* reads *cáman díné*, instead of *cámadáné;* and explains it, 'solely by the choice of the father, if he be despondent.' This reading is noticed by JÍMÚTAVÁHANA.

It appears from the text of HÁRÍTA, that if the father be living, but anyhow disqualified for business, the eldest son has a right to manage the affairs. MENU *also* declares, that the eldest son alone shall conduct the affairs like a father, although the title of all the brethren to that estate be equal.

IX.

MENU:—The eldest brother may take entire possession of the patrimony; and the others may live under him, as *they lived* under their father, *unless they choose to be separated.*

Having premised *that* "*brothers may divide the paternal estate* after the death of the father and the mother," *he proceeds* to declare, that "the eldest brother may take entire possession of the patrimony;" that is, the eldest endued with all the most eminent virtues, shall have power, like a father, over the inheritable patrimony. The *Retnácara.*

Consequently, the title of the eldest son alone to possess the whole estate after the father's decease, is propounded. Since the preceding text (IV) had shown the succession of several sons, the others must live under him, receiving food and vesture. This must be supplied in the text. Hence his younger brother should incur no expence whatsoever without his consent.

"The others may live under him;" that is, they should so behave as they are guided by his conduct. The *Retnácara.*

This is a rule for parceners living together. If all the sons have an equal title to the patrimony, why should the eldest son alone exercise authority over it? To this question the same legislator replies:

X.

MENU:—By the eldest, at the moment of his birth, the father, having begotten a son, discharges his debt to his own progenitors; the eldest son, therefore, ought, *before partition,* to manage the whole patrimony:

2. That son alone, by whose birth he discharges his debt, and through whom he obtains immortality, was begotten from a sense of duty: all the rest are considered by the wise as begotten from love of pleasure.

"Having begotten a son;" being relieved from the evil attendant on the want of male issue: and that evil is suggested by the scripture, which declares, that a blissful region is not attained if male issue be wanting; that is, a place of purity is missed. CULLÚCABHATTA.

Accordingly it is mentioned in the *Mahábhárata*, towards the end of the first book, that the ingress of the sage MANDAPÁLA into a region of purity was prevented by the want of male issue; for the same poem shows that the debt to his progenitors, undischarged, is the ground on which a man is excluded from the blissful region, even though his conduct have been virtuous. In this case it therefore appears, that the debt to progenitors is discharged when a son is begotten. The Sage expressly declares it; "by "the eldest, at the moment of his birth, the father discharges his debt to "his own progenitors." By these terms, "at the moment of his birth," it is intimated, that the son's performance of rites ordained by the *Véda*, and his sacraments and the like, are not requisite *to this effect*. Accordingly, should the son die immediately after birth, still his father is exonerated from debt *to his progenitors*. The scripture shows, that the debt continues while no son is born, and is discharged by the birth of a son. For this reason he ought to take entire possession of the patrimony. But this is *mere* commendation of the eldest son, not in effect declaring his property in the whole estate; for a former text propounds the equal title of all sons. Since the authority of one son over all *the rest* must be established, that commendation is a ground of selection, and an argument whereby the authority of the eldest son alone is established. "The eldest son was begotten from a sense of duty;" he produces merit whereby bliss in a region of felicity is attained. By this phrase, the Sage again celebrates an eldest son, by whose birth the father discharges his debt, or on whom he devolves the load of debt, and through whom he obtains immortality, or perpetual delight, because he is relieved from debt. But some remark, that immortality is obtained through a grandson, as declared in the following text, which is thus expounded by CULLÚCABHATTA: 'by a son a man conquers all worlds, the celestial abode and the rest; through a son's son he remains there long:' consequently this sense is suggested, "through the eldest son of his eldest son he obtains an endless abode."

XI

MENU:—By a son, a man obtains victory over all people; by a son's son, he enjoys immortality; and, afterwards, by the son of that grandson, he reaches the solar abode.

CULLÚCABHATTA has expounded "obtain immortality," become exempt from death; and has quoted the authority of the *Veda*. In this text (X 2) the devolving of the debt on the eldest son is mentioned as a cause which produces merit, whereby the gates of a blissful region are opened to the father. Hence there is no vain repetition. "The rest are considered by Sages as begotten from love of pleasure;" as procreated by one who embraces a woman *solely* for the enjoyment of pleasure. This is merely

figurative; for a text expresses, "many sons are to be desired, that some one of them may go to *Gayá*."

That being the case, should the eldest son, by force or artifice, take the whole estate, would there be no offence? Not so; for the same Sage thus proceeds:

XII.

MENU:—As a father should support his sons, so let the first-born *support* his younger brothers;* and let them behave to the eldest, according to law, as children *should behave* to their father.

Let the first-born support his younger brothers, in like manner as a father should support his sons; let him not defraud them: and let them behave to him as sons; and not bare him malice.

XIII.

MENU:—The first-born, *if virtuous*, exalts the family; or, *if vitious*, destroys it: the first-born is in this world the most respectable; and the good never treat him with disdain.

He exalts the family by proper acts; if the younger brothers be supported, the family is exalted: or he destroys it *by misconduct;* this is merely a *supposed* possibility. The *Retnácara.*

It is merely a supposed possibility; for, though unsupported *by him*, if they are by any *other* means maintained, the family cannot be destroyed. But CULLÚCABHATTA thus comments on the text: 'in whatever path of vice or virtue the eldest brother walks, that same path do his younger brothers follow; by virtuous proceeding the family is exalted, by vitious proceeding it is destroyed: and the virtuous first-born is most respectable in this world, and never slighted by the wise.'

XIV.

MENU:—If an elder brother act as an elder brother ought, he is *to be revered* as a mother, as a father; and even if he have not the behaviour of a good elder brother, he should be respected as a *maternal uncle or other* kinsman.

"As a mother:" by thus mentioning his parity with a mother, it is intimated, that the first-born may take possession of the maternal estate. In like manner, even in other cases of estates left by relatives, *the eldest brother may take entire possession.* This observation of some lawyers is questionable. "The behaviour of a good elder brother" consists in the support of his brethren and the rest. Even though he neglect that, he should be revered, but *only* as a kinsman, such as a maternal uncle and the rest: obedience to his commands is not required.

XV.

Let not an elder brother present ornaments to his wife, without giving *due maintenance* to his younger brothers.

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* Chap. IX, v. 108. The difference in translation is slight. Sir W. J. must have read *pitaiva*, instead of *pitéva*.

Literally, a nuptial present; expounded by HELAYUDHA, ornaments of a wife and the like.

XVI.

NÁREDA:—Let the eldest brother support, like a father, all the others, who are willing *to live together without a partition;* or even the youngest brother, *if all assent, and* if he be capable of business: capacity for business is the best rule in a family.

But if the eldest son be incapable, and the middlemost, or another, be capable of business, he alone has authority over the whole patrimony; for he is able to support the rest. Thus the Sage adds, "capacity for business is the best rule in a family;" *the best rule* regards capacity for business, or ability to support *the family*. Consequently, seniority by age is not an indispensable requisite. If the management of the whole patrimony go with capacity alone, is not the commendation of the first-born, as delivered by MENU, improper in this place? *This may be answered by asking*, is the management of the whole patrimony conferred by such commendation alone? for support is also ordained (XII). Consequently, if two sons, or all the sons, be capable of business, to show that *in that case* the first-born alone shall have the management of the whole estate, although another son be also capable of supporting *the parceners*, the commendation of the first-born has been pronounced.

XVII.

SANC'HA and LIC'HITA:—Should the father be incapable, let the first-born manage the affairs; or the next son experienced in business, if the father assent. Not without the father's consent, can a partition of the property be made. If he be old, if his faculties be impaired, or if he be afflicted with a chronic disorder, let the eldest son, like a father, protect the property of the rest; truly the *support* of the family depends on the patrimony: sons who have parents living are not independent, nor even *after the death of their father* while their mother lives.

"The next;" the middlemost; or, should he also be incapable of business, the son born after him: such is the order. "If he assent to it," is expounded in the *Retnácara*, with the approbation of the eldest son: we explain it, with the consent of the father. Thus the trust of supporting the family is mentioned as devolving on the first-born and the rest successively; the care of the property, when the father becomes old or the like, is subsequently mentioned: there is, consequently, no vain repetition. Here also seniority is not invariably required; but he alone who is experienced in affairs should take care of the property. In naming the eldest, it is supposed that every brother, or the eldest at least, is experienced in business. Consequently, as the eldest, the next born, or the youngest, should support the family and protect the property while the father is living, *but disqualified*, so should the same be also affirmed after his decease. The first-born is here supposed to be living, for the text mentions "the next son:" by this term (*anantara*) is signified one born immediately after him; else it would

have been said, another brother. The commendation of the first-born, as delivered by MENU, supposes him to be living.

"If his faculties be impaired" (XVII); if his intellect be disturbed by *vitiated* air or the like. The *Retnácara.*

The Sage mentions a reason for the indispensable necessity of protecting the property through the eldest or other son, when *the father* himself is incapable; "the support of the family depends on the patrimony."

"Sons are not independent;" they have no power to aliene *property* by gift or the like. They are also not independent wtile their mother lives, and is virtuous. The *Retnácara.*

Without her consent, they have no power to aliene *property* by gift or the like. Since the mother has no property in the estate after the father's decease, sons alone could have aliened it by gift or the like. This text is delivered as an argument, by way of example. Consequently, such is the mode in which sons should live together after their father's decease: and that *is* only *enjoined,* if all consent; else a partition must be made.

XVIII.

MENU:—Either let them thus live together, or, if they desire *separately to perform* religious rites, let them live apart; since religious duties are multiplied in separate houses, their separation is therefore legal, *and even laudable.*

"Thus *live together:*" although their title to the patrimony be equal, the rest should appoint any one brother, the first-born, or another, to govern the whole; they should conduct themselves with proper behaviour, according to his directions: let them thus live together. Or, if they desire to multiply religious duties, let them live apart. We shall comment on this text in the chapter on Partition made by sons.

XIX.

SANC'HA and LIC'HITA:—Willingly let them live together; by union they exhibit thrift.

By their union, that is, by their mutual assistance, they exhibit or display thrift; that is, they thrive. The *Retnácara.*

SECT. II.—*On the Portion of an Elder Son, in a Partition made by a Father.*

Since the text of SANC'HA and LIC'HITA (XVII) shows that partition may not be made without the father's consent, it appears that partition should be made if the father choose to divide the estate. Hence partition among sons, even though their father be living, does take place, but founded solely on the father's choice.

XX.

GÓTAMA:—After the death of the father, the sons may divide his estate; or while the father lives, if he choose to divide it, and if their mother *or any other wife* be too aged to bear more sons.

"After the death of the father, the sons may divide his estate:" this intends partition made by sons. That title will be discussed.* "If their mother be too aged to bear more sons:" this supposes an estate inherited from the paternal grandfather.

JÍMÚTAVÁHANA, RAGHUNANDANA, and others.

That shall also be hereafter explained. The text must be supplied; while *the father* lives," and "if he choose *to divide it.*"

XXI.

SANC'HA and LIC'HITA:—While the father lives, the estate may be divided, with his consent, openly, *in the presence of arbitrators*, or privately, *by a mutual adjustment*, according to law.

"With his consent;" with the consent of the father.

CHANDÉSWARA and others.

Consequently the two legislators expressly declare, that, while the father lives, the estate can only be divided with his consent. "Openly;" that is, in the presence of arbitrators. "Privately;" without the intervention of arbitrators, by a mutual adjustment only, but according to law.

XXII.

BAUDHÁYANA:—With the father's assent, a partition of heritage may be made.

Wherefore should a father, who lives happily with sons and the rest, desire partition? To this HÁRÍTA replies:

XXIII.

HÁRÍTA:—A father, making a complete partition even during his life, may either go to the forest *as a hermit*, or enter at once into the *fourth* order, *or that* of an anchoret; or he may divide a small part of his fortune *among his sons*, and remain in his house, keeping the greater part of it, *but without concealing any portion of his wealth:* should he lose, *by some calamity*, what he reserved, he may take back from them, for his maintenance, what he gave; but he must *give a* portion *to* sons reduced to indigence.

"May go to the forests;" may enter into another order. The author of the *Pracáśa* explains the subsequent term (*literally* "the order suitable to an aged man") 'living on the wealth and under the rule of his sons, without becoming a recluse, according to the *Véda.*'† HELÁYUDHA and the *Párijáta* expound the term as signifying the fourth order: in their opinion the preceding term, "go to the forest," is restricted to the hermit *or third order*. But in fact, as is observed in the *Retnácara*, the disjunctive particle being indeterminate, other legal forms *of retirement*, besides the seclusion of a hermit, or of an aged man *abiding in the house of his son*, do also occur. Hence a father may *also* retire to the bank of the Ganges, or other holy place, subsisting on alms or the like. Intending to enter into another

* Chap. III.

† See MENU, Chap. VII, v. 86 and 94.

order, a father reflects, "when I am no longer present, my sons, contending for wealth, will be ruined by mutual injuries; I must therefore divide the estate amongst them." This and other *occasions* may be understood. But when a father, wearied by the mutual contests of his sons in regard to the fruition of the estate, "divides the estate among them and resides at home, determining, "I will live apart, reserving a sufficient portion for myself;" then the legislator says, "he may divide a small part of his fortune." Consequently he may divide an inconsiderable part among his sons, and they may gain other property and support themselves: but the father, being old, and of course unable to labour, may reserve a considerable sum sufficient for his own support and for religious purposes, and may *thus* reside at home. However, he must practise no fraud. But if, in consequence of any accident, his wants cannot be supplied out of the property reserved, however considerable it may have been, then the lawgiver declares, "should he lose what he reserved, he may take back from them, namely from his sons, what he gave." The reason is, that no duty is more strictly incumbent on sons and the rest, than veneration of parents: and if the purpose cannot be fulfilled even with the whole of the wealth acquired *and distributed* by the father, they must even give wealth acquired by themselves. "But he must portion sons reduced to indigence:" if any of his sons be incapable *of maintaining themselves*, he must support them out of his own property *which he reserved.*

XXIV.

NÁREDA:—Or even the father, being advanced in years, may himself divide the estate among his sons, giving to the first-born the best portion, or in any mode which he shall choose.

The particle "or" denotes and alternative; either the father or the sons may divide the estate. Consequently the sense is, when the father has reached old age, his sons may make the partition with his consent. Or this other case may be the partition, which is made after the death of a father. "Being advanced in years;" at any period in the second or third stages of life, and so forth:* such is the sense. Accordingly GÓTAMA ordains a *second* partition when a son is born after partition has been made. "The best portion;" a greater portion; the deduction of a twentieth part ordained by MENU, or other suitable portion. The same should be also understood in respect of the middlemost and the rest. This concerns eldest sons and the rest endued with virtuous qualities. The very same exposition is delivered by RAGHUNANDANA and others. CHANDÉSWARA explains "best" most excellent, greatest. The form of a deduction equal to the twentieth part of the estate will be explained. "Or in any mode which he shall choose:" he may reserve any part he chooses, or give more to any one of his sons, and less to another.

XXV.

VISHNU:—If a father make a partition between himself and his sons, he may give or reserve, at his pleasure, any part of his own acquired wealth; but over *landed* property left by a paternal grandfather, the father and the sons have equal dominion.

* Infancy is the first stage; the close of life is the fourth. T.

This concerns wealth acquired by the father without using the patrimony which had descended from his own father. CHANDÉSWARA.

What has been acquired without adventuring the patrimony, a father has power to distribute in equal or unequal shares. MISRA.

And that is reasonable; *for*, what is gained on the adventure of property left by his father, being considered as an acquisition of his father, by means of that property *adventured*, is deemed *a part of* his patrimony. *But* it may be objected, that, if a man recover, by his own labour, the property of his grandfather, which had been seized by a stranger, it is treated as property acquired by himself; yet wealth gained by his own skill and labor, with the use of an inconsiderable portion of the wealth left by the grandfather, is considered as a part of the patrimony descending from the grandfather: this appears unequal.

XXVI.

YÁJNYAWALCYA:—If the father make a partition among his sons, he may give, at his pleasure, *more to some and less to others*, or give the first-born the portion of an eldest son, or divide the estate among all of them in equal shares.

This text declares three cases: 1st, At his pleasure, he may give more to some and less to others; 2dly, He may give the first-born the portion of an eldest son; 3dly, He may give equal shares to all his sons. Unequal distribution is not prohibited in the case of partition made by the father, as it is in that of partition made by sons: to declare this, and other points, another text will be delivered. There is consequently no vain repetition. Some remark, that partition cannot be made at the option of sons, since they have no property *in the estate* while the father lives. Hence, as is observed in the *Dípacalicá, the term* "at his pleasure" denotes, that the distribution should be made at the pleasure of the father, not of the sons. The same legislator propounds unequal distribution in another text (XXXIII): hence both opinions may be received under the ambiguous sense of the phrase, since other Sages propound both *rules*. In none of the three cases is the distribution *made* at the pleasure of sons; and the reason of that is their want of ownership. This, however, concerns wealth acquired by the father himself; for a different rule will be propounded (XCII) in respect of property descending from the grandfather. Such is the opinion intimated in the *Retnácara*.

Although a father have power to give, at his pleasure, more to some and less to others, when he distributes wealth acquired by himself, still an unequal distribution must not be made through partiality, resentment, or the like.

XXVII.

CÁTYÁYANA:—If a father, during his life, divide the property, he shall not prefer one of his sons, nor exclude one of them from a share, without a sufficient cause.

"Without a sufficient cause," such as duty and piety, a large family to maintain, or inability *to earn his livelihood* and the like (as explained on the concurrent opinions of JÍMÚTAVÁHANA and the rest), he shall not prefer one son, or distinguish him by assigning to him a larger portion; nor shall

he exclude one of his sons from a share, or disinherit him, without a sufficient legal cause of exclusion, such as degradation and the like, or spontaneous relinquishment of his share. In like manner, he should not give to the eldest a deduction equal to a twentieth part *of the estate* or the like, without a sufficient cause, namely the virtues required. Consequently, if there be a sufficient cause, he may give a greater portion to one of his sons, a deduction of a twentieth part and so forth to the first-born and the rest, and no share to an eunuch, an outcast, or the like. But if he do give a greater portion to one son, through partiality, because he was born of a favourite wife, and give less or none to another son through resentment, or give the portion of an eldest son to his first-born, though destitute of virtue, that distribution is invalid.

XXVIII.

NÁREDA:—A father has no power, if his intellect be disturbed by sickness, or his mind agitated by wrath, or his affection partially set on the son of a favourite wife, to make a partition different from the law *of inheritance*.

A father, acting in a mode not conformable with law, through delusion arising from acute disease, in which air or other *constitutional element is depraved*, or through delusion arising from wrath, or through the influence of excessive partiality on his mind, from love or the like, has no power to make an *irregular* partition. His want of power consists in this: whatever distribution is *thus* made by him is void, because it is made by one who is disqualified; as the ceremonies ordained to be performed at twilight *are fruitless*, when performed by a man of the servile class, *because he is disqualified*. Accordingly VÁCHESPATI BHATTÁCHÁRYA observes, on the text of NÁREDA, that the phrase "a father has no power" shows, that, if sickness or the like be the cause, unequal partition, even though made by the father or other owner, and even though the wealth were acquired by himself, is invalid, like an act done without ownership. "*A partition* different from the law," here signifies a partition in which more is given to one, and less to another, deviating from the law which propounds the portion of an eldest son and the rest. The particle connects the act with the several circumstances enumerated in the first hemistich, "if his intellect be disturbed by sickness, &c." However, since CÁTYÁYANA declares a reserve, "without a sufficient cause" (XXVII), unequal partition made by the father, and refusal of partition, in respect of property acquired by himself, which are declared by VISHNU and many other Sages to depend on his pleasure, are legal, according as there is or is not a sufficient justifiable cause of partiality in the mind of one whose intellect is undisturbed, as regularly happens among good men; (such are duty and piety, a large family to maintain, inability *to earn a livelihood*, and so forth;) or a sufficient cause for excluding one son from a share, such as degradation and the like: the partition is valid, because there is no impediment, such as sickness and the rest mentioned by NÁREDA.

Since it is declared that the ruler *of the family* has no power *to make such a partition*, the object *of that proposition* is *to show* the subject of the epithets or accidents, "making a partition different from the law," "if his mind be disturbed by sickness, &c." Here the deviation from the law is the cause which invalidates the partition. The accident or epithet, "whose

intellect is disturbed by sickness," as well as the rest, is both characteristic and causal. If he act contrary to the law through partiality, he is deprived of power: this is characteristic. Why should he act contrary to law? Because his intellect is disturbed by sickness: this consequently is a causal description. 'Deviating from the law, which propounds the portion of an eldest son:'* therefore, an allotment of a greater portion, arising from the deduction of a twentieth part or the like, does not constitute a partition different from the law *of inheritance.*

The text of YÁJNYAWALCYA (Book II, Chap. IV, v. 58) is explicit. Since the eighteen titles of administrative law are comprehended under the term "contract" (*vyavahára*), partition of heritage *by a person so circumstanced* is also null; for MENU likewise applies the same term to inheritance, "these eighteen titles of law are settled as the ground-work of all judicial procedure (*vyavahára*) in this world" (Book II, Chap. I, v. 2). In this place also, the term (*vyavahára*) signifies title of jurisprudence, or *act cognizable in courts of justice.*

"Intoxicated;"† *inebriated* with wine or the like. "Insane;" through the depravation of constitutional elements, as air or the like. "Grievously disordered;" afflicted with severe illness. "Disabled;" disqualified, being addicted to gaming or the like. "Infant;" under the age of sixteen years. "Agitated by fear;" impelled by dread of punishment and the like. "Without authority;" unauthorized by the owner. Gratuitous gifts and the like made by these are invalid. In six cases mentioned, from inebriation to fear, the reason *of invalidating the contract* is the perturbation of mind. But, as RAGHUNANDANA observes, a man wholly dependent, a slave, a son and the rest, are comprehended under the term "and the like:" and that observation is just. VÁCHESPATI BHATTÁCHÁRYA.

Here the expression "gaming or the like," comprehends lust and other passions; for the word, which occurs in the text (*vyasana*) is explained, 'danger or calamity, degradation, and vice proceeding from lust or wrath.' Consequently the sense is this: as the worship of deities, performed during impurity, is productive of no merit, so does the volition of one insane, wrathful, or the like, who intends to make a gift, produce no devesture of former property; for, as a pure *worshipper* is alone qualified for one act, so is a wrathless man or the like for the other. Consequently, since the distribution made by him is null, partition must be made afresh. However, should he not give a deduction of a twentieth part and so forth to a virtuous eldest son and the rest, the partition is not therefore invalid; for the allotment of a twentieth part and the like is founded *only* on piety and other merits, and equal partition is also propounded by the law: and if he do allot a suitable portion, including a deduction of a twentieth part and so forth, to his eldest son and the rest, the partition is not different from the law *of inheritance;* for the law assents to a deduction of a twentieth part and the like. This brief statement may suffice. The disabilities, which are comprehended under "degradation, &c.;" will be explained in the chapter on Exclusion from Inheritance.

* See the definition of illegal partition in the preceding paragraph.

† That a reference may be unnecessary, I subjoin the text. A contract made by a person intoxicated, or insane, or grievously disordered or disabled, by an infant, or by a man agitated by fear or the like, or *in the name of another* by a person without authority, is utterly null. Book II, Chap. IV, v. 58. T.

XXIX.

MENU:—If, among undivided brethren *living* with their father, there be a common exertion for common gain, the father shall never make an unequal division among them, *when they divide their families.*

If sons unanimously demand partition, the father shall not make an unequal partition on account of *filial* piety or the like: but he may give a deduction of a twentieth part and so forth to his eldest son and the rest; for that is not considered as a share. JÍMÚTAVÁHANA.

RAGHUNANDANA and others concur in that exposition. But CULLÚCABHATTA thus expounds the text: 'at the time of acquisition, if there be a 'common exertion with the father for common gain, an unequal division 'shall not be made.' CHANDÉSWARA has a similar gloss; and the *Viváda Chintámeni*, in effect, concurs in this exposition: for it is there said, 'this 'concerns property acquired by brothers contributing equal labour *to the 'acquisition;* there is consequently no discrepance.' In effect, the gloss intends property acquired by the equal exertion of brothers in common with their father. Should it be acquired independently of the father, it will be mentioned, that the sons alone have power over it, since they are principals *in the acquisition*.

Two objections have been noticed by SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on the work of JÍMÚTAVÁHANA: 'since reason 'sufficiently shows that unequal partition ought not to be made, the text is 'superfluous;' and again, 'since MENU declares, "if a deduction be thus '" made, let equal shares of the residue be ascertained *and received*," the 'portion deducted being first set apart out of the undivided estate, it falls 'not within partition, *but precedes it*.' On this point it is said, if a joint acquisition be made by brethren, an unequal partition should not be allowed: this, it must be affirmed, is admitted by TERCÁLANCÁRA; for he says, 'reason sufficiently shows, &c.' But if all the brethren unanimously demand partition, shall or shall not unequal partition be made? This is the question between CULLÚCABHATTA and JÍMÚTAVÁHANA and the rest. The text relating to what reason sufficiently shows, another revealed law must be established as the foundation *of the proceeding* in the case of partition unanimously demanded. Such is the objection according to JÍMÚTAVÁHANA and others. As the text is expounded by thee as repeating what reason sufficiently shows, so may it not be also expounded by me as relating to what reason does sufficiently show: for a son, unable *to earn a livelihood*, demands a partition undue in respect of himself, and injurious to his father; hence, since he commits an offence, a greater portion shall not be given to him? No; for the word 'with' would be unmeaning; and it is proper to affirm, that, if an exertion be made, both by a son unable to earn a livelihood, and by the rest, an unequal division shall not be made. It has been said, 'since reason sufficiently shows, &c.' Now, what proof is there that a father may not give the portion of an eldest son out of what he may acquire with the co-operation of his children, or a greater share on account of inability *to earn a livelihood;* for no other text declares it, nor does the reason of the law show it? But if it be affirmed, that this is propounded with a view to the case of sons who have been unaided by their father, still there is no question; for sons alone have the ownership in the case of an acquisition made independently of the father. The law, therefore, obviates the supposition, that, the father having full power over property acquired by

the joint and equal exertion of sons, his distribution of less *to one* and more *to another*, through his own stubborn will, is not inconsistent with common sense. Let it not be objected, that to seek another revealed law as foundation *for the proceeding in the other case*, is equally elaborate. That it would be elaborate when this is unavoidable, is no *legitimate* objection; and thou wouldst find it more tedious to establish *a double* import of this text from the ambiguity of the terms, lest disparity should thus occur: the brothers having equally contributed to the acquisition, any one of them, who has a large family to maintain, shall take a greater share; but, the brothers having made equal exertions to obtain partition, any one who has a large family to support shall *only* receive an equal share *with the rest*.

As for what has been said, that the deduction of a twentieth part falls not within partition, that does not appear accurate; for VRĬHASPATI (XXX) declares a distribution of shares with a deduction of a twentieth part to be one form of partition, and without it, the other form; and partition, consisting in the property being predicated of each son individually after divesting the property of all the sons collectively, and in the ascertainment of *individual* property previously unascertained, does exist in this case. On the contrary, MENU propounding equal shares after having explained the deduction of a twentieth and the like, it appears that the term "equal partition" signifies the allotment of shares without deduction of a twentieth part. However, it appears, from the insertion of the word "never," that an unequal division originating in filial piety or the like should not be made. Accordingly MISRA cites this text (XXIX) after explaining the deduction of a twentieth part. Again; the word "*utt'hána*," signifying acquisition, occurs in the instance of concerns among partners (*sambhúya samutt'hána*), more literally, common exertion of partners. There is no objection to its also bearing the same sense in this instance.

XXX.

VRĬHASPATI:—Two modes of partition among heirs are expressly mentioned; one with attention to priority of birth, and the other with equality of allotment.

As for what is said, that, when sons demand partition, an unequal division should not be made, even on account of *filial* peity or the like, because, however dutiful he may have been, the son has in this instance committed an offence; the answer is, since such an allotment depends solely on the choice of the father, it is already known that no such allotment is made, if he do not choose it. Of what use then is this text? If the father, nevertheless, do give *such greater share*, the other sons may oppose it; *for* it is declared by the law, that unequal partition shall not be granted when the brethren themselves make the exertion; a text propounded for this purpose is pertinent, *and not superfluous*: if this be alleged, *the answer is*, it is inconsistent with common sense that the law should attend to the claims of men guilty of equal offences.

A man has five sons; one dutiful, one unable to earn his livelihood, another burdened with a large family to be maintained, a fourth otherwise circumstanced. These four, but not the fifth, demand a partition. In this case unequal distribution on account of piety, duty, or the like, may be made; for there is no common exertion of all the brethren. If many, not all, be the determinate sense *of the plural term*, can there be no unequal division in the case of two sons, should they both demand partition; for, on

this supposition, there is no common exertion of many, *that is, of three or more?* If the sense of the inflection be indeterminate, then, even in the case of five sons, any one contumacious son, demanding partition, might prevent the allotment of a greater share to the dutiful son; which is inconsistent with common sense.

Such is the opinion of ancient authors. But JÍMÚTAVÁHANA and the rest assert, in as many words, that if the sons unite in demanding partition, a greater portion cannot be given to one on account of piety and the like, but the portions of the eldest son and the rest may be allotted to them, provided they be virtuous. On this question the intelligent must decide. This brief statement may suffice.

XXXI.

VRĬHASPATI:—Sons; to whom equal, less, or greater shares have been allotted by their father, should maintain such distribution; otherwise they shall be chastised.

According to CHANDÉSWARA and others, this text concerns wealth acquired by the father without co-operation of the sons; and the text of MENU (XXIX) concerns property acquired with their co-operation: there is no contradiction. According to JÍMÚTAVÁHANA and others, the text of MENU should be adduced in the case of partition demanded by the sons, and the text of VRĬHASPATI in the case of partition made by the father of his own accord.

XXXII.

NÁREDA:—Whether the father distribute equal shares to his sons, or give more wealth to some, and less to others, *according to circumstances*, such shall be their shares; for the father is lord of all.

This and the following text of YÁJNYAWALCYA have the same import with the text of VRĬHASPATI.

XXXIII.

YÁJNYAWALCYA:—The distribution made by the father is declared binding on sons among whom an unequal division has been made.

Again; these texts imply, that if the father give a greater portion to one son on account of his filial piety or the like, another son may not oppose that disposition. But should he give his whole fortune, or nearly the whole, to one son, through partiality, and give nothing to another, or a trifle only, through resentment, such a distribution may be resisted. The text of VRĬHASPATI and others cannot deny the right of opposition; for it is declared in the text above cited, that "the father has no power, *in such circumstances*, to make a partition different from the law *of inheritance*" (XXVIII). The acquisition of property by co-operation of father and sons, shall be subsequently discussed.

A deduction of a twentieth part has been mentioned: of what nature is that deduction?

XXXIV.

MENU:—The portion deducted for the eldest is a twentieth part *of the heritage*, with the best of all the chattels; for the middlemost, half of that, *or a fortieth*; for the youngest, a quarter of it, *or an eightieth.*

That which is deducted (*uddhriyaté*), is a deduction (*uddhára*) or portion deducted. "A twentieth part" is one part in twenty. The best of all the chattels *shall be also allotted to him;* for the particle bears the collective sense: both should be given to the eldest, and should be first set apart for him. Next, "half of that," or half of a twentieth part, that is, one part in forty, must be set apart for the middlemost; and "a quarter of it," or a quarter of a twentieth part, that is, one part in eighty, for the youngest. Dividing the residue into equal shares, as directed by MENU (XXXIX 1), let one share, together with the twentieth part *already deducted*, be given to the eldest; another, with the fortieth part, to the middlemost; another again, with the eightieth part, to the youngest.

This is the first of two modes of partition mentioned by VRĬHASPATI (XXX). The fortieth part should be computed on the whole estate, not on the residue after deducting a twentieth part; for that is expressly declared by the term "half of that." The same *should be* also *affirmed* in respect of an eightieth part. Consequently, where three sons *inherit*, and the estate amounts to one hundred *suvernas*, five must be first set apart for the eldest; half of that, or two *suvernas* and a half, for the middlemost; and one and a quarter for the youngest: eight *suvernas* and three quarters being thus appropriated, the residue, amounting to ninety-one *suvernas* and a quarter, should be equally divided. Such is the whole sense.

Since "equal shares" (XXXIX 1) suppose partition made by sons, after the demise of their father; and the deduction of a twentieth part and so forth is thus propounded (XXXIV), after premising partition subsequent to the death of the father (XVIII); is not that deduction unconnected with a distribution made by the father himself? No; for MENU has supposed the deduction of a twentieth part and so forth in the case of partition made by the father; else he would not have ordained an equal distribution in the case of a common exertion among brethren (XXIX), for equal partition would be a matter of course. Therefore, unequal division takes place even in the case of partition made by the father: and the deduction of a twentieth part and so forth constitutes that unequal division, as above-mentioned; for he has declared no other mode.

XXXV.

MENU:—If brethren once divided, and living again together as parceners, make a second partition, the shares must in that case be equal, and the first-born shall have no right of deduction.

Attention to priority of birth is thus forbidden in the case of a second partition made among brothers who were re-united. By the texts which immediately follow (Chap. IX, v. 211 and 212), if any one of the brothers die, his uterine brothers and sisters shall divide his share. In the text (v. 213), the greater share in right of primogeniture, comprising the twentieth part and so forth, is denied to an eldest son who is not virtuous. By the following text (v. 214), all those brothers, whether first-born or younger, who are addicted to any vice, lose their title to the inheritance. Virtue, as well as primogeniture, is declared requisite. The subsequent text (v. 215 and XXIX) cannot relate to unequal partition of another kind; for the right of primogeniture is the subject considered. But the word "never" bears an allusion to the greater allotment on account of filial piety or the like, as mentioned by other Sages: it does not intend that alone; for

it is wrong to assume an argument from an allusion to what has been propounded by others, wholly neglecting what had been said by *the author* himself.

It is asked, if a man have five sons, what shall be the shares of the others besides the eldest, middle, and youngest; for MENU has not propounded their additional portions? The answer is, there are no others; for the eldest is the first-born of all the sons, the youngest the last-born, and all the intermediate sons are middle. MENU himself makes this evident.

XXXVI.

MENU:—The eldest and youngest respectively take their just mentioned portions; and if there be more than one between them, each of the intermediate sons has the mean portion, *or the fortieth.*

"Just mentioned;" declared in the preceding texts. "The mean portion;" a fortieth part: and that shall be given to each of them; not a single fortieth part distributed among all the intermediate sons, for that would be an unjust disparity. Consequently one part in twenty, and the best chattel, shall be given to the eldest, and the several portions ordained shall be allotted to the rest. Such is MENU's intention, as expounded by CHAṆDÉSWARA: and that must be understood, *both* in the case of partition made by a father, and in that of partition made by brothers.

XXXVII.

MENU:—Of all the goods collected, let the first-born, *if he be transcendently learned and virtuous*, take the best article, whatever is most excellent in its kind, and the best of ten *cows or the like.*

Here also, as had been already mentioned, he shall take the best of all the chattels. In the preceding text (XXXIV), one part in twenty was ordained; but in this text, one in ten, that is, the best of ten chattels. Such is the difference. Texts of GÓTAMA, BAUDHÁYANA, DÉVALA, and others to the same purport, will be cited.

XXXVIII.

MENU:—But, among brothers equally skilled in performing their several duties, there is no deduction of the best in ten, *or the most excellent chattel;* though some trifle, as a mark of greater veneration, should be given to the first-born.

What had been said, "of all the goods collected, let the first-born take whatsoever is most excellent in its kind," is not applicable to the present case: a trifle only, as suggested by the phrase "let the first-born take the best article," shall be given to him as a mark of greater veneration, or as evidence of increasing respect. In what case shall this be done? The legislator explains it; "among brothers equally skilled in performing their several duties:" if all the brothers be equally assiduous in the study of scripture, in the use of arms, in commerce, in service, or the like, one part in ten shall not be given to the eldest: and since that is merely illustrative, one part in twenty also shall not be given; but one excellent chattel only shall be given.

XXXIX.

MENU:—If a deduction be thus made, let equal shares of the residue be ascertained *and received;* but if there be no deduction, the shares must be distributed in this manner:

2. Let the eldest have a double share, and the next born a share and a half, *if these two clearly surpass the rest in virtue and learning;* the younger sons must have each a share: *if all be equal in good qualities, they must all share alike.* Thus is the law settled.

The first hemistich has been *already* expounded. The law-giver propounds the share of an eldest son in another form; "but if there be no deduction, &c." If that be not done which has been thus directed, "of all the collected wealth, let one part in twenty be first allotted to the eldest son, and so forth;" *in other words,* if that *portion* be not set apart, then this distribution, which will be mentioned, must be made of all the collected wealth. The Sage propounds it *in the second verse.* Of all the goods collected let the eldest take two shares; the next born, or second brother, a share and a half; and the rest, a share a piece. Add one to the number of sons; to this doubled, again add one, and divide the amount of the heritage by this divisor; the quotient is a share: give four such shares to the eldest brother, three to the second brother, and two to each of the others. For example; let the sum be seventy-eight *suvernas,* to be divided among five brothers: seventy-eight *suvernas* being divided into thirteen parts, each share amounts to six *suvernas;* and the portions are ascertained at twenty-four *suvernas* for the eldest, eighteen for the second, and twelve for each of the others.

Thus MENU delivers four modes of unequal partition; and since partition cannot be made four ways in the same case, it must be affirmed that he intends a distinction according to circumstances. Such is the opinion of CULLÚCABHATTA, CHANDÉSWARA and others. VÁCHESPATI BHATTÁCHÁRYA gives a similar exposition; but adds—'In the case of partition by a father, 'the deduction of a twentieth part and so forth shall not be given to the 'eldest son to increase his portion; for that belongs to the subject of parti- 'tion among brothers. The portion of an eldest son and so forth, which is 'ordained in the several texts wherein partition made by a father is 'propounded, should alone be allowed in the case of a partition made by 'him.' Those texts follow.

XL.

BAUDHÁYANA, citing the scripture:—"*Let* equal *shares be given* to all without distinction, or let the eldest deduct the most excellent chattel:" or let the first-born take one of ten *cows and the like,* and let the rest share equally.

He directs the best chattel to be given to the eldest, and one out of ten cows, or other decade of homogeneous things.

XLI.

DÉVALA:—The mean portion, *or fortieth part,* is ordained for sons who have equal pretensions; *but* let the tenth part of the heritage be given to the eldest, who conducts himself strictly according to law.

The Sage directs, that the tenth part *of the heritage* shall be allotted to the eldest; and the mean portion ordained by MENU, or one part in forty, to the others.

XLII.

'APASTAMBA:—Having satisfied the eldest with one chattel, let the father, who makes a partition in his life-time, assign equal shares to his sons, but exclude one who is emasculated, insane, or degraded.

'He ordains, that one chattel only shall be given to the eldest; but 'equal shares to the other sons. From the mutual disagreement of these 'texts, the rule of decision must be argued according to their different 'imports. If the eldest be transcendently virtuous, and the rest be not 'virtuous, *the partition shall be made in* the second mode propounded by 'BAUDHÁYANA (XL); that is, one part in ten *shall be allotted* to the first-'born: if the eldest have some virtue, and the others none, a tenth part 'must be given to the first-born in addition *to his share of the residue*, and 'a fortieth to the others, as ordained by DÉVALA (XLI): if all be deficient 'in virtue, one chattel, as directed by 'APASTAMBA (XLII), shall be given 'to the eldest in addition *to his share*; and that chattel shall be the best 'article; for this coincides with the first mode propounded by BAUDHÁYANA.'

The text of DÉVALA may also be applicable to the case where the eldest son is transcendently virtuous, and the rest have some good qualities; for, the same commentator has so said in treating of another case where four shares are allotted *to the eldest son*. CHANDÉSWARA appears to have entertained the same notion; for he inserts these texts under the title of Partition made by a father, but places the texts of MENU and the rest under the title of Partition among brothers after the death of their father: however, he has further inserted the following text under the same title:—

XLIII.

SANC'HA and LIC'HITA:—To the eldest son a bull shall be given; to the youngest, a house other than the father's habitation.

And this is enjoined even without the father's acquiescence, if the eldest and youngest sons be virtuous; else the precept would be nugatory. This is also admitted by HELÁYUDHA. May not this text concern partition among brothers after the death of their father, since the phrase "other than the father's habitation" suggests the father's decease? No; for it occurs under the same title with the following text, in which partition by a father is evidently intended:

XLIV.

SANC'HA and LIC'HITA:—If there be one son, let *the father* himself reserve two shares, and the best of the slaves and cattle.

The meaning of the text is this: having taken, as an additional portion, one of the bipeds and quadrupeds, a male or female slave, and a cow or the like, let the father reserve for himself two shares; and in the former text, "other than the father's habitation," signifies, excepting the house inhabited by the father. The word (*avast'hána*), from its etymology, bears the sense of locality. It should be here remarked, that the additional portion thus ordained is intended as a token of greater veneration towards

the father, like the portion of an eldest son; and it must be allotted to him, even though he be deficient in virtue. If he be virtuous, then more must be allotted in proportion to his good qualities. What more? In answer to this question, the portions mentioned in texts relative to the share of an eldest son are adduced. In this instance the equality of the father and eldest brother should be acknowledged. But that has not been mentioned by VÁCHESPATI BHATTÁCHÁRYA: he considers both texts of SANC'HA and LIC'HITA as relating to partition among brothers; for one (*éca*) is explained, 'chief, other, alone.' (AMERA's Dictionary.) "One son;" the chief son; that is, the eldest son: he may reserve two shares for himself, as directed in the following text:—

XLV.

VRĬHASPATI:—The eldest, *or he who is pre-eminent* by birth, science, and virtuous qualities, shall receive two shares of the heritage; the rest shall share alike: but he is *venerable*, like their father.

There is this difference only; the first text (XLIII) imports, that he shall further receive some trifle, such as a chattel. In the *Párijáta* also, "one son" is explained eldest son; and the sense of the second text (XLIV) is thus obvious. But the author of the *Bháshya* reads *yady écah syát*, if he be single, instead of *yady éca putrah syát;* and expounds that reading, 'if he be single, or have lost his wife, he may reserve two shares; but if his wife be living, he must satisfy her with another share: and he may take one of the bipeds and quadrupeds in addition to the two shares reserved.' Its consistence with the text of YÁJNYAWALCYA, "or divide the estate among them in equal shares" (XXVI), must be established by HELÁYUDHA, by the author of *Bháshya*, and by CHANDÉSWARA, explaining that text as relating to the case where all are deficient in virtue: the apparent contradiction is reconciled by VÁCHESPATI BHATTÁCHÁRYA, referring one text to the case of an eldest son very deficient in virtue: on this subject nothing is directly stated in the *Viváda Chintámeni*, *Dáyatatwa*, works of JÍMÚTAVÁHANA, and other books. But the uncertainty as to what adjustment should be made if both the eldest and second son be virtuous, is a reproach to the gloss of CHANDÉSWARA and the rest, and to that of VÁCHESPATI BHATTÁCHÁRYA. Again; the text of DÉVALA, "the mean portion, &c." (XLI), is also explained by VÁCHESPATI BHATTÁCHÁRYA, from parity of reasoning, as implying partition among brothers. *But*, were it so, why should not *all* texts which relate to partition among brothers be also adduced in the case of partition by a father, since a question can be thereby satisfied? This should be discussed.

Texts which propound the portion of an eldest brother in the case of partition among brothers, are here cited incidentally. The text of MENU (XXXIV), and others have been *thus* quoted and explained. As for this text of MENU (XXXIV), *its sense is*, 'If there be many sons by one mother, 'and all virtuous, but the relative degree of virtue decline in the order of 'birth, then a twentieth part of the collected wealth shall be deducted for 'the eldest son, and the best of all the chattels shall be given to him; half 'of that, or the fortieth part, with the mean chattel, shall be given to the 'middlemost; and a quarter of it, or the eightieth part, with the worst 'chattel, shall be given to the youngest.' Thus CHANDÉSWARA comments on the text. Here, it should seem, the mean chattel for the middlemost, and the worst chattel for the youngest, though not directed by the text,

are asserted from their parity with the form of the portion allotted to the eldest. Some lawyers contend, that this should not be admitted on the *simple* affirmation of CHANDÉSWARA: the relative degree of virtue declining in the order of birth can only be well applied to the case of three brothers; else, since no fourth or fifth share has been propounded, and since the precedent reasoning, which shows the same additional portion for all the intermediate brothers, would be irrelevant, the text could not be fitly applied. In fact, "youngest" (XXXIV) may signify the third brother; the fourth brother, the fifth, and the rest, even though virtuous, have no additional portion, since none has been ordained by the Sage: this we hold reasonable. It disagrees, however, with the gloss of CHANDÉSWARA on a text which will be cited. To this some object, that the supposed case of relative degrees of virtue declining in the order of birth is nugatory; even among brothers equally virtuous, a greater portion must be given to the first-born, for he is pre-eminent: in the uncertainty what should be given, the double share mentioned by MENU should be allotted to him as the greatest portion in comparison with the rest; to the youngest should be allotted the smallest of all the portions specified by MENU. That cannot be; for MENU himself (XXXVIII) denies a deduction among brothers equally endowed with good qualities; and the text is so expounded by CULLÚCABHATTA. Consequently that should not be admitted. It is proper to allow some chattel in right of primogeniture: and something should be given in right of pre-eminence in virtue, proportionate to the degree of it; that something should be the best of all the chattels, for this coincides with the text of BAUDHÁYANA (XL). We cannot therefore determine, why a mean chattel for the middlemost, and the worst chattel for the youngest, unnoticed by CULLÚCABHATTA, are asserted by CHANDÉSWARA. It should not be argued, from the following text, because "successively" signifies in order, that the eldest shall have the best *chattel*; the middlemost the mean *chattel*; the youngest the worst. That term relates *only* to the allotment of dwelling-houses.

XLVI.

HÁRÍTA:—When a herd of kine is to be divided, let the rest of the brethren give a bull, *in lieu of* the best chattel, to the eldest brother, or give him the best *portion*; leaving *to him* the *images of* deities and the *patrimonial* house, let them remove and erect other habitations: *or if they remain* in the same *court*, the best apartment shall be assigned to the eldest, and successively *the next best* to the others.

The sense of the text is this: let a bull, *in lieu of* one chattel, that is, in lieu of the best chattel, be given to the eldest; this shall be given over and above his share. The lawgiver subjoins an alternative; or the best and most excellent *portion*: the text must be so supplied. "Deities;" images of VISHNU and the rest. "The house;" that which was built by their father; the ancient abode *of the family*, and so forth: this supposes one only house. Shall the rest remain without a habitation? Therefore does the Sage add, let them remove, and erect habitations beyond the limits of the court or yard: but if they cannot remove and erect other houses, then, says the legislator, the best quarter shall be assigned to the eldest. CHANDÉSWARA so expounds the text. "If they remain in the same court," or in the house built by their father, *such an arrangement shall be made.*

In the *Retnácara* the term used in the text (*daoshina*) is explained best: that shall belong to the eldest; and successively the mean apartment to the middlemost; and the worst to the youngest. Some explain the term, *literally*, the fourth quarter; for that is best: successively, east, north, and so forth, *shall quarters be assigned to the rest.*

The text of MENU (XXXVI) is thus expounded in the *Retnácara*: 'If the eldest and youngest be virtuous, and several intermediate sons be deficient in virtue, the eldest and youngest respectively take the twentieth and the eightieth parts, and all the intermediate sons take a single fortieth.' But, if the intermediate sons be virtuous, each of them shall receive a fortieth part. Should the eldest alone be virtuous, he shall take the best article out of all the goods collected (XXXVII). If the eldest surpass the rest in virtue, and they have good qualities in a moderate degree, though somewhat inferior to the youngest, then GÓTAMA propounds *the rule of distribution.*

XLVII.

GÓTAMA :—A twentieth part of the heritage, a pair *of kine,* a car with the beasts which have teeth in both jaws, (*namely, horses, asses, and the rest,*) and the bull kept for impregnation, shall belong to the eldest; cattle blind of one eye, or old, and those of which the horns are broken, and the tail hairless, shall belong to the middlemost, if there be two or more *head of such cattle*; a ewe, *some* grain, *a little* iron, a house, a cart and yoke, and one of every sort of quadruped, shall belong to the youngest; the residue shall be equally divided.

"A twentieth part;" the twentieth part deducted as abovementioned: a pair of kine: "beasts which have teeth in both jaws;" as horses, asses and the like: "a bull;" one capable of impregnating the cows: this deduction shall, if possible, be made for the eldest. "Old;" aged: "the horns of which are broken;" which have broken horns: "and the tail hairless;" of which the tail-bone is destitute of hair: this deduction shall be made for the middlemost, provided there be two or more *head of such cattle.* An ewe, some grain, a little iron, one house, a cart, *a pair of* oxen, and one of every kind of quadruped, cows and the rest, shall be deducted for the youngest. The residue shall be equally divided. Such is the exposition conformable with the gloss of CHANDÉSWARA. But, if there be no cows blind of one eye and the like, what shall be done? The answer is, some trifle must be given as an equivalent. It should not be argued, that, like a promised sacrifice, if effects be wanting, nothing shall be given. When the thing is ascertained, and the question be relative to the act, in this form, "what shall be done with this thing;" then alone, on failure of the thing, the act is annulled: but, when the gift is ascertained, and the question be, "to whom shall it be given?" which is answered by the command, "give it to such a one;" then, on failure of the thing, it is reasonable that an equivalent should be given. Thus do some lawyers expound the law.

XLVIII.

ÁPASTAMBA :—In certain countries a *suverna,* a black cow, and the black produce of the earth, devolve on the eldest son, together with the utensils of the common father.

"Black produce of the earth;" as *tila*, pease and the like. "Utensils;" vessels for eating and so forth.

XLIX.

BAUDHÁYANA:—On the death of the father, the portion of an eldest son is, in the order of the four classes, a bull, a horse, a goat, and a sheep.

"In order;" that is, a bull *shall be the portion* of a *Bráhmana*; a horse, of a *Cshatriya*; a goat, of a *Vaisya*; a sheep, of a *Súdra*. According to SRÍ CRISHNA TERCÁLANCÁRA, *Súdra* here signifies the son of a man of the servile class by a woman of the same tribe; there is no inconsistency. But, according to RAGHUNANDANA and others, *the term here signifies* one born of a woman of the servile class by any father, whether of the sacerdotal or other tribe.

L.

VASISHT'HA:—Partition of heritage among brothers shall be thus made: the eldest shall take a double share, and the tithe of cows and horses; the youngest shall have the goats, and sheep, and one house; *the sword and other* black iron, and the furniture of the house, shall belong to the middlemost.

Since the particle connects the tithe of cows and horses with what had preceded, this also shall accrue to the eldest. How many goats and sheep shall belong to the youngest? As many as possible. The middlemost shall have the sword, which is made of iron, the pestle and mortar, and the rest of the furniture.

From the mutual contradiction of these texts, the partition is regulated by authors determining the degrees of virtue. That shall be now recapitulated.—1st, VÁCHESPATI BHATTÁCHÁRYA considers the text of MENU (XXXIV) as applicable to the case where many sons inherit the estate, and the degrees of virtue they possess decline in the order of birth. CHANDÉSWARA concurs in that exposition, and remarks, that "the youngest" signifies one born after all the rest, and that all the intermediate sons shall have a fortieth part. We understand by the word "youngest," in this place, the third son: the deductions for the fourth son and the rest shall be successively half of that which preceded. Some also admit this *deduction* in the case of partition by a father: but that is not approved by VÁCHESPATI BHATTÁCHÁRYA, nor by CHANDÉSWARA; and nothing is expressly said on this point in the works of JÍMÚTAVÁHANA and the rest.—2ndly, According to the gloss of CHANDÉSWARA on the text of MENU (XXXVI), if both the eldest and youngest be virtuous, and the intermediate brothers be deficient in virtue, the eldest and youngest respectively share, as deductions, the twentieth part and the quarter of it, and all the intermediate brothers share a single deduction of a fortieth part: but, if the intermediate sons be virtuous, each of them shall deduct a fortieth part. VÁCHESPATI BHATTÁCHÁRYA holds, that, if all be equally virtuous and learned, the eldest and youngest respectively share the twentieth part and the quarter of that deduction, and each of the intermediate brothers has a fortieth part. We affirm, that, the intermediate brothers being less virtuous than the eldest, and either less or more virtuous than the youngest, the rule must be settled in *one or the other of* the two modes proposed by CHANDÉSWARA.

—3dly, When the eldest is transcendently virtuous, and the rest deficient in virtue, the rule is assumed in the *Retnácara* from the text of MENU (XXXVII). VÁCHESPATI BHATTÁCHÁRYA concurs therein; but expounds the text, 'of all the goods collected let the first-born take the best article in each sort.'—4thly, CULLÚCABHATTA appears to consider the text of MENU (XXXVIII), as regulating the case where all are equally virtuous. The text of HÁRÍTA (XLVI) intends the same case. But JÍMÚTAVÁHANA says, 'there shall be no deduction of the best in ten cows or the like.—5thly, When the eldest, and he who was born next after him, possess the good qualities described, and the others are deficient in virtue, the rule is deduced by VÁCHESPATI BHATTÁCHÁRYA from the text of MENU (XXXIX 2). But some hold this rule applicable when the eldest is transcendently virtuous, and any one younger son is less virtuous in the subduple proportion.—6thly, Accordingly to some lawyers, these texts of MENU are also applicable to partition by a father. From the text of GÓTAMA (XLVII), CHANDÉSWARA deduces the rule, when the eldest surpasses the rest in virtue, but they possess good qualities in a moderate degree. Some consider this rule as applicable when the eldest possesses the science and practice suitable to his own class.—7thly, The rule of 'APASTAMBA (XLVIII) should be adduced when the eldest possesses virtue in an inconsiderable degree.—8thly, In the *Retnácara*, the text of BAUDHÁYANA (XLIX) is applied to partition in the same circumstances. But some consider it as intending the same case with the text of MENU (XXXVIII).—9thly, From the text of VASISHT'HA (L), VÁCHESPATI BHATTÁCHÁRYA deduces the rule when the eldest has a double degree of virtue, and the rest one degree each. CHANDÉSWARA *assumes it*, when the eldest is transcendently virtuous, and the rest *simply* virtuous; but he has inserted this text, after premising partition among brothers by two or more mothers. Modern lawyers deduce from this text a rule for the case when the eldest son is endowed with an assemblage of good qualities, science, conduct, care *of his brethren* and so forth.—10thly, From the text of DÉVALA (XLI) HELÁYUDHA and the *Párijatá* deduce the rule when the eldest is versed in scripture, and the rest are deficient in virtue: they explain "the mean portion," the deduction of a twentieth. Others, says CHANDÉSWARA, *adduce this text*, when the eldest is skilled in *sacrifice with* fire, and in *the study of* the *Védas;* but the rest are simply virtuous: the mean portion signifies the deduction of a twentieth. VÁCHESPATI BHATTÁCHÁRYA concurs therein; but explains "mean portion," the deduction of a fortieth.—11thly, CHANDÉSWARA, from the texts of VRĬHASPATI (XLV) and GÓTAMA (LI), deduces the rule when the eldest is transcendently virtuous, and the rest are deficient in virtue. But VÁCHESPATI BHATTÁCHÁRYA expounds it, 'if the rest have good qualities in a small degree:' he thinks, that the eldest could not *be said to* surpass the rest in science, unless they possess learning in a small degree. It must be also affirmed, say some lawyers, that he supports *his brethren* like a father; for he takes a *superior* share like a parent, and the text describes him as equally venerable with their father. It should be here considered, that one excellent chattel must be given to the father's first son; should he be versed in the science suitable to his class, a deduction should be allowed in proportion to his knowledge: if he support them, like a father, from their early infancy, he may take an unequal share; and if his conduct be strictly proper, another chattel should be assigned to him. This may be argued from common sense, or from the reason of the law. Since it is not *otherwise* expressed, all besides the eldest and youngest are middlemost, that is, *intermediate.* VÁCHESPATI BHATTÁCHÁRYA considers the equality of allotment mentioned in the text of VRĬHASPATI (XXX) as

applicable to the case where the eldest is deficient in virtue, but the rest are equal to each other in good qualities. The same must be also understood in respect of property acquired by the common exertion of several brothers, even though deficient in good qualities. The text of MENU (LII) forbids the deduction of a twentieth part in favor of an eldest brother, who defrauds his juniors; for CULLÚCABHATTA expounds "deprived of his own share," deprived of the share to which he would have been entitled on account of primogeniture.

LI.

GÓTAMA:—Or the first-born shall have two shares, and each of the rest one.

LII.

MENU:—Any eldest brother, who from avarice shall defraud his younger brother, shall forfeit *the honours of* his primogeniture, be deprived of his own share, and pay a fine to the king.

On this subject modern lawyers say, if the brethren be void of offence, the portions of younger brothers decrease with the order of birth in a subduple proportion to the deduction of a twentieth part. That the deduction of a twentieth part shall belong to the first-born of all the sons, is natural: if he be endowed with science and virtue, twice as much, or a tenth part, shall be allotted to him. In like manner, if the intermediate sons be also endowed with science and virtue, they shall have the double of their own *regular* portions. But if the eldest support and educate his brothers, like a father, one additional share shall be assigned to him as to a parent: in like manner, if the middlemost or youngest do so, half a share, or a quarter, or the like, *shall* be allotted to them: "next born," in the text of MENU (XXXIX 2), is merely an instance. The allotment of a pair of oxen and so forth (XLVII) *is regulated* by the various degrees of virtue and good conduct. If younger brothers surpass their elders in virtue, there is no deduction of the best in ten (XXXVIII); but some trifle should be given to the first-born. Should he offend, by defrauding his *younger* brother, an equal share only shall be allotted to him; even though he have both good and bad qualities, nothing shall be given *as a mark of veneration*: like the fine to the king, this also is another penalty imposed on him.

If the deduction of a twentieth part and so forth in favour of the first-born and the rest do not occur in these days, the uncensured practice of good men, or the contumacy of younger brothers, is the ground *on which it is disused*, not the want of elder brothers entitled to that deduction; for even now are found elder brothers versed in science, skilled in arms, and so forth.

Is the deduction of a twentieth part *ordained for partition* among brothers in general, *whether by the same or* by different mothers, or among uterine brothers only? To this VÁCHESPATI BHATTÁCHÁRYA replies, 'the 'double share mentioned by VRĬHASPATI (XLV) concerns uterine brothers 'only; for, having delivered in this text a precept couched in general terms, 'the Sage specifies a distinction in the following text, which ordains the 'delivery of the deducted allotment, and relates to that alone.'

LIII.

VRĬHASPATI and MENU :*—All the sons of twice-born men, produced by wives of the same class, must divide the heritage equally, after the younger brothers have given the first-born his deducted allotment.

'The text of BAUDHÁYANA, "let the first-born take one of ten cows, '&c." (XL), those of MENU (XXXVII and XXXIV), and the text, which ordains equal shares, may also concern *half* brothers by different mothers.' His meaning is this: from the terms of the text of VRĬHASPATI (LIII), and the rule of VISHNU (LIV), it *appears* that a deduction should only be given to the first-born, not to the middlemost also. That deduction is of three kinds: the best, as propounded by MENU (XXXVII); the mean portion, as ordained by BAUDHÁYANA (XL); the worst, as specified by MENU (XXXIV). By affirming three modes of deducting the portion *of the first-born*, three questions are satisfied; and texts which propound other forms of deduction, are not admitted *in this case:* no deducted allotment is given to the rest; their good qualities need not be examined.

LIV.

VISHNU :—Let sons produced by wives of equal class receive equal shares, but give the best chattel with a deducted allotment to the first-born.

But modern lawyers hold, that the several texts should be adduced, if a brother be endowed with such and such good qualities. JÍMÚTAVÁHANA also considers the text of VRĬHASPATI (XLV) as applicable to uterine brothers only. But CHANDÉSWARA, after premising 'partition among brothers by several mothers,' inserts the text of MENU (XXXIX 2), and the rule of GÓTAMA (LI), and attributes to them a similar import with the text which propounds the deduction of a twentieth part. MENU, having propounded four or five cases of deducted allotments, and not expressly noticing the general subject of partition among sons born of different mothers, proceeds to the succession of an elder son born of a wife last married. For this reason CHANDÉSWARA has supposed no difference in respect of the double share and the like, between sons born of different mothers, or born of the same mother. VÁCHESPATI MISRA concurs in that opinion. The text cited (LIII) is a mere repetition: after declaring unequal partition among sons produced by wives of different classes, to obviate the same *supposition* in the case of wives equal in class; it does not distinguish between the share increased by a twentieth, and the equal share; for both depend solely on the qualities of the brothers. Consequently, under the term "deducted allotment" an equal share is comprehended, as well as the share augmented by a twentieth part of the heritage; it is not proper to deduce any consequence solely from the literal sense of the term "deducted allotment:" else, the deduction of a twentieth part might be assigned to an eldest brother of the half-blood, who may be deserving of that allotment; but the portion of an elder brother could not be given to one who should merit a double share: were it so, the disparity would be great and unjust. Such is their meaning.

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* MENU, Chap. IX, v. 156; but here cited as a text of VRĬHASPATI.

LV.

MENU:—A younger son being born of a first-married wife, after an elder son had been born of a wife last married, it may be a doubt in that case how the division shall be made:

2. Let the son born of the elder wife take one most excellent bull deducted from the inheritance; the next excellent bulls are for those who *were born first, but* are inferior on account of their mothers, *who were married last.*

This doubt arises in the case of two or more sons produced by wives equal in class; for, partition of heritage among sons of various classes will be subsequently propounded. The *Retnácara.*

Let the first-born (*púrvaja*), that is, the son born of the elder wife, *though* in fact last-born, take one most excellent bull. CULLÚCABHATTA.

The author of the *Pracáśa* concurs in that exposition. This deduction is allotted to the younger son born of a first-married wife, because his mother is the wife married from a sense of duty; for she is described in the text of DACSHA (Book IV, v. LI). But, if the first wife be barren; from the second wife, a younger son be born; and from the third, an elder son; it should seem that the bull shall be given to the son of the second wife: for, "the elder wife" is here a general expression; and the allotment is only grounded on the text, since reasoning is not adduced. However, this argument does exist; that, as respect is due to brothers born before them, from those who are born last, so is respect due from wives last married to those married before them. "Elder wife" signifies earlier married: "younger wife" signifies later married. The senior and junior rank of wives is not regulated by their age; for the term is explained in the *Retnácara* and other works, 'first married or earlier espoused.' "The next excellent bulls:" others less excellent than that which is deducted for *the son of* the elder wife, belong one each to those who are inferior; that is, who are inferior to the son of the elder wife, because they are sons of a younger. The seniority of the mother prevails over that of the son. The text supposes many inferior sons born of younger wives. "On account of their mothers;" in the order of their mother's *rank*. Consequently the son of the eldest wife shall take the most excellent bull; the son of the intermediate wife, a bull somewhat inferior to the first; the son of the third wife, one inferior to this also; and so forth. Thus should seniority be acknowledged according to the rank of the mother. But if the son of the elder wife be also elder than his brothers, the same lawgiver propounds a distinct rule:

LVI.

MENU:—A son, indeed, who was first born, and brought forth by the wife first married, may take, *if learned and virtuous*, one bull and fifteen cows; and the other sons may then take, each in right of his several mother: such is the fixed rule.

Kine amounting with the bull to the number of sixteen; that is, fifteen cows and one bull. "And the other sons may then take, each in right of his several mother;" neglecting the senior or junior rank of other brothers in right of age, let them take deducted allotments, according to their precedence as sons of the second, third, and fourth wives, and so forth.

But this is mentioned by MENU as the opinion of others. His own opinion is, that the seniority of a son follows the order of birth; for the first-born benefits his father by delivering him from the hell named *put*, and by other services; the middlemost is also qualified to perform obsequies for his father, in preference to the third or younger son; and the law declares veneration due to them. However, should a priest espouse wives of various classes, and a son be first produced by the *Cshatriyá* wife, and last by the *Bráhmaní*, the son of the *Bráhmaní* is nevertheless considered as the eldest. Intimating this, the legislator thus proceeds:

LVII.

MENU:—As between sons born of wives equal in their class, *and without any other* distinction, there can be no seniority in right of the mother, the seniority ordained by law is according to the birth.

Since there is no distinction between sons born of wives equal in their class, (for there is in that case no difference arising from class;) there can be no seniority, as abovementioned, in right of the mother. But, if the wives be of various classes, since the sons are of the same tribe with their mother, it would be an unfit proceeding to regulate seniority by birth, whereby the *Cshatriya* and the rest might precede the *Bráhmana*. In that case, therefore, seniority in right of the mother must be admitted; but in this, since the wives belong to the same class, the seniority of sons, who are *consequently* equal in class, must follow the order of birth. Such is the opinion delivered by the author of the *Pracáśa*.

But CULLÚCABHATTA thinks 'both opinions are approved by MENU. 'Consequently, should the seniority of the mother, and superiority of class, 'be opposed to each other, an alternative must be allowed. As one precept 'of the *Véda* directs, "take sixteen jars *of rice and milk*, in the sacrifice '*performed through the night, and* called *atirátra*;" and another precept of 'the *Veda* directs, "do not take sixteen jars *of rice and milk* in the sacra-'fice called *atirátra*; and two precepts being thus contradictory, an alter-'native is allowed; so in this case also, a practical alternative must be 'accepted in this world. For example; if the son of the elder wife be virtuous, 'and the son of the younger, though first-born, be deficient in virtue, then 'the son of the elder wife shall take the most excellent bull: but, if the 'eldest son, born of the younger wife, be virtuous, he shall take it. The 'alternative must be therefore regulated by the good qualities of the sons. 'The allotment of an elder son's portion, determined by the good qualities 'of the son, is noticed by VRĬHASPATI (XLV). Should the eldest by birth 'surpass the rest in science and the like, he shall have the best deduction; a 'single bull *is ordained* for one deficient in virtue; a bull and fifteen cows 'for one moderately virtuous: but this deduction depends on the seniority of 'the mother.' According to this interpretation, it is evident that even an elder brother of the half-blood shall have a double share, if he surpass the rest in virtue: MENU almost expressly declares, that other brothers, though born of different mothers, shall have a deducted allotment. Both commentators think these texts of MENU imply the admission of seniority in right of mothers, because he declares that the deductions for others besides the first-born shall be regulated by the rank of the mothers. That is liable to objection.

HELÁYUDHA expounds 'first-born (*púrvaja*), born at an earlier time, 'senior in age, and so forth. The next excellent bulls, that is, others less

'excellent than the best, shall be duly distributed, one to each, among those 'who are inferior, (that is, younger in age than the first-born,) on account 'of their mothers, or in the order of precedence appertaining to their mothers.' He thinks the right of the first-born to the portion of an elder brother can be established by reasoning, because he is more venerable than the son of the elder wife married to complete the father's rites of initiation, since he benefits his father by delivering him from the hell called *put*, and by other services, and since he is qualified to perform his obsequies, competent to support the rest of the brethren, entitled to respect, and strict in his conduct. As in the case of two inconsistent texts of law, that prevails which can be justified by the best arguments;* so, from parity of reasoning, in the case of contested inferences from the same law, the prevalence of one should be established by argument. In mentioning the deducted allotment successively taken by sons in right of their several mothers, it is supposed that they are sons of mothers unequal in class, as is evident from the subsequent text (LVII). The verse which will be hereafter cited, (LX 2), must be considered as relating to the virtuous son of a *Bráhmení* wife: and the preceding text (LV 2) must also relate to the son by a woman of the sacerdotal tribe.

The opinion delivered by the author of the *Pracáśa* seems preferable. The alternative supposed by CULLÚCABHATTA is liable to eight objections. To the opinion of HELÁYUDHA a single objection may be made; since the rule of partition among sons produced by wives unequal in class will be delivered *by the legislator* in another place, it is wrong to suppose it implied in this. Let it not be said that he supposes the deducted allotment should be given to sons in right of their mothers, not in the order of their class, but in that in which the several mothers were espoused, since he has not expressly declared his meaning. Were it so, the claim in right of mothers being admitted on the grounds of the text, without argument, from reasoning, it would be proper to expound "first-born" (*púrvaja*) son of the elder wife. Or the following must be *the sense of the text as* expounded by HELÁYUDHA; the first-born; or he who delivers his father from the hell called *put*, shall take one excellent bull; the next excellent bulls shall be distributed among the younger brothers "on account of their mothers;" that is, according to the number of mothers, not according to the number of individual sons; for it may coincide with the texts of VRÏHASPATI and GÓTAMA (LXII) and (LIX). This supposes an equal number of sons by each mother: or the deduction may be computed from the number of mothers, even though the number of sons be unequal, merely because it is so directed in a text of MENU.

LVIII.

GÓTAMA:—One bull shall be the additional portion of an eldest son *born of a wife last married but of equal class*; *or, if* produced by the first-married wife, he shall have a bull and fifteen cows; or the same deduction *which is granted to an elder son born of a wife last married*, shall be received by a younger son born of an elder wife.

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* YÁJNYAWALCYA:—If two texts differ, reason, *or that which reason best supports*, must in practice prevail.

Expecting to find the text at large cited in this work, I have omitted to place and number this quotation. T.

On the exposition of CULLÚCABHATTA, the meaning of the text is obvious. It is thus expounded in the *Retnácara;* 'one bull shall be the 'deducted allotment of a son produced by a wife equal in class but not first 'married: it coincides with the text of MENU (LVIII). "Produced by the 'eldest wife, &c." that is, an eldest son born of a first-married wife *shall have* '*a bull and fifteen cows:* this coincides with the another text of MENU '(LVI). 'If a younger son born of a first-married wife be virtuous, the 'Sage adds, "the same deduction shall be received by him;" that is, a 'deduction shall be received by a younger son born of a first-married wife, 'in the same mode in which a deduction is received by the eldest son born 'of a wife last married.' The text of SANC'HA and LIC'HITA, already cited (XLIII), is also adduced in the case of partition among sons by several mothers. "Eldest son" intends him who delivers his father from the hell named *put*, as has been already remarked: and this allotment supposes both the eldest and the youngest to be endowed with good qualities.

LIX.

GÓTAMA:—A special partition may be made *among sons, by allotting one share* to each of *their* several mothers, as *shares are usually allotted* to kinsmen.

"As kinsmen;" as brethren. When there are four or five brothers, as one share is given to each brother—so, when there are many mothers, who have an equal number of sons, one share shall be allotted to each mother, because it is troublesome to divide the estate among the brothers. Afterwards, a special partition among uterine brothers shall be made by those sons, with the deducted allotment of a twentieth part and so forth, if all were equal in class. The *Retnácara.*

From the term 'deducted allotment of a twentieth part,' which occurs in the gloss, it should seem that the deduction of a twentieth part and the like must be allowed even in the case of partition among brothers of the half-blood; the allotment of a bull only must have been propounded by MENU and the rest, supposing the eldest to be deficient in good qualities. That, however, is questionable. This distribution, by the number of mothers, can only be adopted in the case of women belonging to the same class; for equal partition can only take place among their sons, and a different partition is ordained in the case of mothers unequal in class.

LX.*

MENU:—If there be four wives of a *Bráhmana* in the direct order of the classes, and sons be produced by them all, this is the rule of partition *among them:*

2. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the *ring and other* ornaments, and the principal messuage, shall be deducted from the inheritance and given to the *Bráhmana* son, together with a larger share by way of pre-eminence.

* Cited again at v. CXXXIX.

3. Let the *Bráhmana* take three shares of the residue; the son of the the *Cshatriyá* wife, two shares; the son of the *Vaiśya* wife, a share and a half; and the son of the *'Súdra* wife may take one share.

"In the direct order of the classes:" so the term is explained by CULLÚCABHATTA. He holds marriages in the direct order of the classes to be legal.

LXI.

YÁJNYAWALCA:—Three wives in the direct order of the classes, two, and one, *may be married by the* Bráhmana, Cshatriyá, *and* Vaiśya, respectively.

"In the direct order of the classes," from which the girls sprung. "Respectively," three may be married by the *Bráhmana,* two by the *Cshatriyá,* and one by the *Vaiśyá.* As YÁJNYAWALCYA does not approve the marriage of twice-born men with girls of the servile class the number of "three," &c. is correct. The possible equal rank of the *Cshatriyá* wife and the rest, in the case of marriage contracted in the inverse order of classes, because, though inferior in the order of classes to the *Bráhmenì,* they precede her in the order of espousals, is improper: as the son of a *Cshatriyá* wife, born before the son of the *Bráhmenì,* has not the honours of primogeniture so the *Cshatriyá,* even though first married, cannot take precedence of the *Bráhmenì* wife; for MENU, using the word 'solely' (Book IV, v. XLVI), makes it evident that precedence shall not be settled according to the order of their marriages, or the sequence of their ages.

"The chief servant in husbandry, and the bull," (namely, that which is kept for impregnating cows,) the horse or other cattle appertaining to the carriage, the ring and other ornaments, the habitation or principal messuage, and one share, shall be given, as a deducted allotment, by way of pre-eminence, to the *Bráhmana,* or son of the *Bráhmenì* wife: in the partition of the heritage, he shall have three shares, as will be shown. Why is one share mentioned as part of the deducted allotment, and three shares again assigned? Why not say at once, that he shall have four shares? The answer is, as in the case of sons belonging to the same class equal dominion is attributed to all (IV), but a deduction of a twentieth part and so forth is allotted to the eldest and the rest, as a mark of veneration for their good qualities, for their birth and the like, so, in this case, it appears from the distribution ordained (LX 3), that such and such are the inherited rights of the *Bráhmana* and the rest, but a deducted allotment, consisting of one *additional* share and so forth shall be given as a mark of veneration for the mother's class. Consequently, as no deduction of a twentieth is given when the younger brother does not yield respect to his senior, (and such is the present practice, but it is morally wrong, like the omission of divine worship,) so likewise, if the *Cshatriyá* and other sons do not yield respect to the *Bráhmana* son, they need not give that *additional* share, but moral demerit is the consequence of their refusal. Let it not be alleged, that the law propounding a deduction of a twentieth part and so forth is therefore nugatory. Like the law which propounds the specific quantity of a *púrnapátra** and the like, this also is not unmeaning; for it is an explanatory

* Book II, Ch. III, Sect. II.

precept. Should the youngest brother, through excess of piety, or through ignorance, allow a greater deduction than the twentieth part or the like, it is illegal; his son or other heir may therefore rescind that distribution: and the law is consequently not unmeaning. But the treble share of the son produced by the *Bráhmenì* wife and so forth must be given by the rest, however reluctant. CHANDÉSWARA thus expounds the text: 'when partition is made, let a larger portion, *consisting* of the treble share receivable by him, be given to the *Bráhmana* son.' Hence, according to the *Retnácara*, the distribution cannot be made by allotting shares to each mother *for her sons*, in the case of mothers unequal in class. Why may not partition be nevertheless made by allotting three shares to the *Bráhmenì* wife for her sons, two to the *Cshatriyá*, one and a half to the *Vaiśyá*, and one to the *Súdra?* It cannot; for such a distribution, allotting shares to mothers for their sons, has not been mentioned by GÓTAMA and the rest. VRĬHASPATI renders this evident:

LXII.

VRĬHASPATI:—If two or more sons were born of each mother, and and they be equal in class and number, these brothers of the half-blood may legally divide the heritage, by allotting shares to their respective mothers *for the benefit of the sons.*

Hence brothers of the half-blood, born of different mothers, by the same father, may divide the heritage by making as many shares as there were mothers, provided they be equal in class, and in respect of the number of sons produced by each mother, and provided every mother have borne sons: and when the subdivision is made, every son receives an equal share. This has been ordained by VRĬHASPATI, to facilitate partition: there is no real difference. The text of GÓTAMA (LIX) intends this case alone; for the import coincides. May it not, therefore, be said that, in this text, "equal in class and number" is merely illustrative; and the distribution may, for that reason, be made according to the number of mothers, even in the case of unequal number of sons *by each mother?* Therefore does the same legislator subjoin the following text:—

LXIII.

VRĬHASPATI:—Among brothers who are equal in class, but vary in regard to the number *of sons produced by each mother*, the shares of the heritage are allotted to the males, *not to their mothers.*

It been necessary to restrict the text of GÓTAMA, "equal class" should be argued as the limitation. It is remarked in the *Retnácara*, that the 'text of VISHNU (LIV) should be adduced in the case of unequal number 'of sons produced by each mother.' Here an observation should be made: if indeed the distibution by allotment of shares to mothers be ultimately a distribution of the heritage among the sons, and the partition be only made according to the number of mothers to facilitate the operation, such a distributien can only take place when all the sons are equally endowed with good qualities, not in a case where sons possess unequal degrees of virtue; for, were it so, the partition could not be well made with attention to the various deducted allotments: or the distribution according to the number of

mothers, can only be made after setting apart the proper deductions. Let it not be argued, that, since the text of MENU, and that of VISHNU cited immediately after it, (LIII and LIV,) propound a deduction for the eldest alone, in the case of partition among brothers produced by different mothers, therefore no deduction shall be *set apart* for the rest. MENU has also suggested deductions for the rest, by saying, "the other sons may then take each in right of his several mother" (LVI). As it were attributing the virtues of the son, and his right of primogeniture and the like, to his mother, the deducted allotment may be so given. For example; to her who has two virtuous sons, and one deficient in good qualities, two degrees of virtue are attributed: in like manner, to her who bore the second, fifth, or seventh son, attributing such seniority, the deducted allotment may be so given.

The texts of MENU and VISHNU ought to be considered as applicable to the case of sons equally endowed with virtuous qualities; to which case another text of MENU (XXXVIII) also relates. Nor should the repetition be deemed a censurable *pleonasm*. Having ordained the allotment of their shares and so forth in the case of several wives taken from various classes, the mention of equal partition, to satisfy the doubt what should be done in the case of several wives taken out of the same class only, is pertinent: and seniority should be understood in the order of birth, in right of which one chattel is deducted, as abovementioned: that is consistent with the comment delivered in the *Retnácara*. But LACSHMÍDHERA and the *Párijáta* expound the word *púrvaja*, in the text above cited (LV 2), son born of the elder wife; and they deem the text applicable to the case where the son of the elder wife is endowed with superior virtue, when compared with the eldest by birth. If the middlemost son, born of the elder wife, be alone virtuous, he alone should be considered as eldest. But, in fact, the first-born ought alone to be considered as eldest; for he alone is variously celebrated, as delivering his father from the hell named *put* and so forth. MENU declares this in express terms.

LXIV.

MENU:—The right of invoking INDRA, by the texts called *swabráhmanyá* depends on actual priority of birth; and of twins also, *if any such be conceived* among *different* wives, the eldest is he who was first actually born.

A particular text, called *swabráhmanyá*, is used by *Ch'handóga* priests, in the *jyótishtóma* sacrifice, for the invocation of INDRA. That single text, considered as many from the various modes of using it, is mentioned in the plural number. Under the authority of a positive precept, the invocation of INDRA, with a view to the invoker's father, can only be pronounced by the first son. As seniority is intended in the phrase "let the father of such a one perform the sacrifice," and as seniority is *suggested* in the *lát'sútra*,* (since the text expresses "among males and females, those who survive, &c."), therefore seniority is attributed to the eldest survivor: it is not required that he should be the son of the first-married wife; for, were that required, it would be nugatory to consider the eldest survivor.

* The allusion has not been explained to me; it does, I believe, relate to a text of the *Véda*. T.

LXV.

DÉVALA:—In low classes, *the precedence of sons is regulated* by the goodness of their disposition; and of twins, *the eldest is he* who is first actually born.

2. Among twins, to him, whose face *kinsmen* first see after his birth, belong *the privileges of* male offspring, *the right of performing obsequies* for his father, and *the honours of* primogeniture.

"Who is first actually born;" who first touches the earth. "Of twins also" (LXIV,) though conceived in the womb at the same instant, "the eldest is he who was first actually born;" that is, who first touched the earth. Should it be unascertained which of them first touched the earth, what shall be the rule? DÉVALA also provides for this case (LXV 2). "Whose face kinsmen or parents first see:" the verb is in the plural number, because many, not the father and mother only, are meant. "Male offspring;" the performance of duties incumbent on male offspring, and relief *afforded to the father* from the evil of wanting male issue: that should be acknowledged to belong to him; else there would be no certainty to whom the portion of an eldest son ought to be given. "For his father;" this son is chiefly qualified to perform those duties towards his father, which must be performed by one alone, such as obsequies and the like. "The honours of primogeniture;" the right of invoking INDRA in the *jyótisht'óma* sacrifice and so forth, and the right of taking the portion of an eldest son and the like: that belongs to him alone. "Among twins;" the dual is here indeterminate: the same rule is applicable to the case of three or more sons produced at one birth.

"In low classes" (LXV); in servile tribes: by the term expressed in the plural number, mixed classes, which adopt the duties of the servile tribe, are comprehended *in the text*. Among these, precedence or seniority is regulated by conduct and good disposition: and that is similar to seniority in right of *science and* virtue; for *Súdras* are not qualified to study the sacred sciences. But VÁCHESPATI holds, that *Súdras* have no *additional* portion in right of seniority by birth.

LXVI.

MENU:—For a *Súdra* is ordained a wife of his own class, and no other: all produced by her shall have equal shares, though she have a hundred sons.

From the words "equal shares" he infers, that no deduction shall be made in right of primogeniture; but the deducted allotment on account of good qualities, as mentioned by VRĬHASPATI, may be allowed, since the text has a general import.

LXVII.

VRĬHASPATI:—Of those sons, he who is endowed with science and good qualities, is entitled to receive a greater portion.

But SRÍ CRĬSHNA TERCÁLANCÁRA says, 'this text (LXVI) has been 'propounded by MENU, as an answer to those who doubt what should be 'the distribution among *Súdras*, because they find a special distribution 'ordained among *Bráhmanas* and other sons produced by wives unequal in

'class: for *Súdras*, wives of one class only have been ordained; their sons 'shall have equal shares. The deducted allotment in right of seniority, such 'as prior birth, is not denied; for the import of the text is evident from 'the phrase, "no other wife is ordained;" and a deducted allotment is not a 'share.' According to all opinions, it must be established, that seniority in right of prior birth is admissible, even among *Súdras*, so far as it concerns religious rites. If the eldest be transcendently virtuous, and the rest be deficient in virtue, the first-born shall have two shares, as ordained in the rule of GÓTAMA above quoted (LI). But if all be equally virtuous, GÓTAMA propounds another distribution.

LXVIII.

GÓTAMA:—Or the first-born shall first choose and take any one chattel and ten head of cattle, *and the rest shall successively make a similar selection.*

Any one chattel which may please him. For instance: the eldest first takes any one chattel at his choice, and ten head of cattle; out of the residue, the second son chooses one chattel and ten beasts; the third son *likewise* selects one article and ten head of cattle, and so forth. Here the first choice allowed to the first-born, is a mark of veneration. But CHANDÉSWARA remarks, that 'the cattle must be of the same kind.' Yet, if that cannot be, the selection must be made in any practical mode. The same legislator excepts certain animals.

LXIX.

GÓTAMA:—*But he shall* not *take ten head* of beasts which have uncloven hoofs, nor of slaves.

"Beasts which have uncloven hoofs;" horses and the rest.

"Bipeds;" slaves and the like. That he shall not take ten of these, is inferred from what preceded. It appears from a text of MENU, that sons do not each take ten goats and sheep.

LXX.

MENU:—Let them never divide *the value of* a *single* goat or sheep, or *a single* beast with uncloven hoofs: a *single* goat or sheep *remaining after an equal distribution*, belongs to the first-born.

Shall they, or shall they not, be taken by the eldest? To this question the answer is, if the eldest be entitled to the deduction of a tenth or twentieth part, under other texts, in that case only is *equal partition* prevented: the goats and sheep may be taken by the eldest; but in this case, which concerns the equal deduction of a fixed number, since the rest of the brethren are forbidden to take ten sheep and goats, the eldest also has no such right. But CULLÚCABHATTA considers this text as relating to partition. For example: five brothers inherit four goats; in that case one goat cannot be allotted to each of them, because the number is less. The pecuniary value, or other property taken as the equivalent, ought therefore to be distributed: but MENU forbids that. What then shall be done? MENU replies, "they belong to the eldest alone;" that is, they shall be given to the eldest alone.

Much various discussion occurs on this point. The text falls within the consideration of the portion allotted to the eldest son, and cannot relate to subsequent distribution. Again; that the sheep and goats should be given to the eldest, has been already mentioned: but what is the rule in respect of beasts which have uncloven hoofs? If the words "sheep and goats" are merely illustrative, that term (beast which has uncloven hoofs) is nugatory. Since the text may coincide with that of GÓTAMA, and forbid the taking of certain cattle as the portion of an eldest son, it is a reproach *to this exposition*, that it abandons that coincidence to establish an independent rule.

LXXI.

NÁREDA:—To the eldest a greater share shall be given; a worse share is ordained for the youngest; the rest shall have equal allotments, and an unmarried sister *shall* also *have a portion*.

2. The same *distribution is ordained* among sons legally begotten on the wife *of a kinsman*.

Some lawyers consider this text as relating to the partition of a small property among brothers, most of whom are equally endowed with good qualities, but the youngest somewhat inferior *to the rest* in virtue: since a deduction, such as one chattel, cannot be given, greater veneration shall be evinced by giving the best share *to the eldest;* and since the youngest is inferior by reason of his deficiency in virtue, the worst share shall be given to him. But CHANDÉSWARA thus conceives the text: 'an additional share, or one besides that in which he will be entitled in the general distribution, shall be given *to the eldest,* in right of primogeniture; less than that, three-quarters, half, or a quarter of it, shall be given to the youngest, if he be virtuous, in proportion to the degree of virtue.' The rest, namely, the intermediate sons, shall have equal shares. They have a right to an equal allotment; that is, they have the succession or ownership of a single share, without an additional portion on account of virtue. An unmarried sister shall have a portion, not an equal share; for equal participation of sisters will be forbidden. Or the sense may be, she shall have an equal *or exact* share, that is, her due allotment without an additional portion; as the phrase "there shall be an equal division of that property" (LXXIII) *signifies that no deducted allotment shall be given:* her due share will be subsequently mentioned, as amounting to a fourth part *of a brother's share*.

The author of the *Pracáśa* reads *Śrésht'háya cha vara,* and a better *portion* to the most excellent brother; instead of *Canisht'háyávara,* a worse portion to the youngest. He thus expounds that reading: 'a double share shall be given to the first born; and the most excellent brother, employed in *managing* the affairs of the family, shall have a better portion; he shall have something most excellent.'

Extending to sons begotten on a wife by a kinsman what has been ordained in respect of sons begotten in lawful wedlock, the law-giver adds, "the same distribution, &c." (LXXI 2): in respect of the sons of the wife legally begotten, the rule is the same with that respecting the son begotten in lawful wedlock. Consequently, whatever rules relative to the portion of an eldest son and the rest have been propounded in respect of the son of the body, the same rules should, if possible, be also admitted in the case of sons of the wife. "Legally begotten;" if an eunuch, or other impotent person,

give his own wife to another man of the same family, or at least of the same class, for the sake of obtaining offspring, and issue be procreated by him approaching her sprinkled with clarified butter and so forth, agreeably to the form of fulfilling the appointment, then only is the son of the wife legally begotten. How then can one adoptive father have two or more sons begotten on his wife by a kinsman? CHANDÉSWARA replies; 'this supposes the birth of twins.' The meaning therefore is, that two or more sons have been produced *at one birth*, although the procreation of one alone were designed.

This concerns one eldest by birth, science and virtue; (XLV). "Birth;" prior birth. "Science;" such science as is not blameable in his class. Endowed with these, and with virtue, he is *venerable* like their father: this reason is assigned for his double portion. The rest, namely, the younger brothers, being deficient in virtue, and unlearned, *shall share alike.* The text of GÓTAMA (LI) concerns the same case.

LXXII.

USANAS:—This partition is ordained among sons born in the direct order of the classes; but partition among brothers of the same class is regulated by equal shares.

The first hemistich alludes to partition among sons produced by wives of various tribes. "In the direct order of the classes;" sons inferior in class to their father. But partition among sons of one and the same tribe is regulated by equal shares. Thus some lawyers expound the text.

And this equal participation supposes all the sons to be equal to *each other*, because they are deficient in virtue; or it regards sons who have acquired wealth by various modes of labour, though one of them may surpass the rest in good qualities. The *Retnácara.*

In the first case, *equal partition shall be made* after giving an excellent chattel as the deducted allotment in right of primogeniture; or it supposes the eldest brother to be guilty of some offence, such as defrauding his younger brothers, or the like. The last case is strictly accurate.

LXXIII.

MENU:—And if all of them, being unlearned, acquire property *before partition* by their own labour, there shall be an equal division of that property *without regard to the first-born*, for it was not the wealth of their father: this rule is clearly settled.

"Unlearned" is merely an instance: the rule is the same if they be learned. CULLÚCABHATTA observes, 'when property is acquired in agriculture, commerce or the like, by the exertion of all the brothers, being unlearned; then, since that was not acquired by their father, but by themselves, an equal division shall be made, and no deducted allotment shall be given. This relates to property acquired without the co-operation of their father; a former text (XXIX) relates to property acquired with his co-operation: there is no vain repetition.'

LXXIV.

YÁJNYAWALCYA:—Should joint-property be improved by the exertion of one parcener, equal partition is nevertheless ordained.

This is an exception to the text of VAŚISHT'HA.

LXXV.

VAŚISHT'HA :—Among these parceners, he by whom property is acquired through his own sole labour, shall take a double share of it.*

If the common property be improved by agriculture, or commerce, or the like, through the exertion of any one parcener, equal partition is nevertheless ordained; a double share shall not be assigned to him by whom it has been improved. But the text of VAŚISHT'HA must be considered as applicable to a different case. The *Retnácara.*

When the common property is improved by agriculture, commerce, or the like, equal partition is made: more is not given *to one parcener*, in proportion to the greater acquisition obtained through his labour; for it coincides with the text of MENU (LXXIII). The *Dípacalicá.*

In fact, "equal." signifies, without the deducted allotment given in right of seniority; *such shall be the partition*, in the case of property acquired by the joint exertion of brothers. Again; it is inferred from the tenor of this text, that the portion of an elder brother, though not *expressly* ordained by YÁJNYAWALCYA, is allowed even in the case of partition among brothers; (*else it would be superfluous to forbid it in this particular instance*). Accordingly VÁCHESPATI MISRA observes, 'if any one parcener, by agriculture, commerce, or the like, improve the common property, still he shall not have a greater portion of it;' but this *is only true* when the rest have likewise done so by the use of common property, else it would contradict the text of VAŚISHT'HA.

LXXVI.

MENU:—Should a younger brother, *in the manner before mentioned*, have begotten a son on the wife of his *deceased* elder brother, the division must then be made equally *between that son who represents the deceased, and his natural father*: thus is the law settled.

2. The representative is not *so far* wholly substituted by law in the place of the *deceased* principal *as to have the portion of an elder son*, and the principal became a father in consequence of the procreation *by his younger brother*; the son, therefore, is entitled by law to an equal share, *but not to a double portion.*

If a younger brother, in consequence of a legal appointment, beget a son on the wife of his elder brother, then an equal partition shall be made between that son of the wife and his *adoptive* uncle *or natural father*; he shall not, like his *adoptive* father, take the deduction of a twentieth. Such is the settled rule of partition: but a son so begotten without a legal appointment, is excluded from inheritance; as will be mentioned. Although it be said, "his uterine brothers and sisters shall assemble and divide equally the share of the deceased" (MENU, Chap. IX, v. 212), still, as the grandson, whose father has deceased, succeeds to his share in the paternal grandfather's estate, it should appear from this reason, that the son begotten on the wife of the eldest brother would be entitled to a deducte dallotment besides the equable share, because he is *considered as* the son of the eldest brother;

* Cited again at v. CXXXVIII, and at v. CCCLVI.

removing this doubt, the law-giver (LXXVI 2) confirms what had been already mentioned. "The representative," the substitute, or son begotten on the wife, has no connexion with the title of the principal, the husband of that wife, his *adoptive* father, whereby he would have taken a deducted allotment besides his equable share. The principal, though husband of that wife, became a father in consequence of the procreation *by his brother* on his wife: therefore the younger brother is entitled, by the preceding law concerning the rule of partition, to an equal division with the son begotten on the wife. The last verse must be thus supplied from the preceding.

CULLÚCABHATTA.

But some lawyers thus expound the text: if the younger brother legally procreate a son on the wife of his eldest brother, then the division must be made equally, whether the partition be undertaken between those brothers, or between the uncle and nephew: no deduction of a twentieth is allowed in this case. The legislator subjoins the cause (LXXVI 2): for the substitution, or procreation of a representative, has been legally effected by such younger brother thereby become principal. How can the younger brother become the principal? Therefore does the Sage add; in the production of offspring, the youngest brother was the father or procreator. Consequently, because the younger brother perpetuates the race, therefore he is principal; and for that cause he is entitled to an equal share: no deducted allotment shall be taken.

'These texts,' say some authors, 'ordaining the portion of an eldest 'son, should be applied to partition by a father, to partition among uterine 'brothers, and to that among brothers born of different mothers, according 'to circumstances; else the questions which arise on such cases are not 'satisfied. Texts which contain a term descriptive of the person who makes 'the distribution, merely elucidate the mode of it. However, the texts of 'such Sages as have propounded special limitations, must be considered as 'special rules, *or exceptions*.' That opinion is unauthorized by ancient authors; for VÁCHESPATI BHATTÁCHÁRYA declares three texts applicable to partition by a father, and two texts of MENU with one of BAUDHÁYANA exclusively applicable to the case of partition among brothers of the half-blood: and CHANDÉSWARA, premising partition during the life of the father, cites four texts *under that head*, and cites nearly *all* the rest in cases of partition among uterine brothers and sons of different mothers; but VÁCHESPATI MISRA and the rest have said nothing expressly on this point.

It should be here noticed, that, at this time, in our country, the practice of deducting a twentieth part or the like, is almost wholly disussed; but some chattel of small value is given to the eldest as a token of veneration.

CHAP. II.

ON THE
DISTRIBUTION MADE BY A FATHER IN HIS LIFETIME.

After incidentally discussing, in this place, the portion of an eldest son, we proceed to explain the proposed subject of partition made by a father. He may distribute, at his pleasure, immoveable and other property acquired by himself. In the first place, he may reserve for himself as much as he pleases. Next, having given to his first-born a suitable portion, according to law, as a token of greater veneration due to him, let him make an equal partition among all his sons. But if one surpass the rest in piety or the like, a greater share should be allotted to him; or if his conduct be irreverent, a less share: if a *heinous* offence be imputable to one son, such as enmity to his father or the like, no share shall be given to him; for it is recorded in the texts of Yájnyawalcya, Vishnu and Hárita (XXVI, XXV, and XXIII), that partition *made* by a father is solely regulated by his pleasure, and that he may reserve a considerable residue, of which the quantity is not limited. The double share, assigned to the father, must be understood as restricted to the patrimony left by the grandfather: yet he may distribute the precious stones, pearls, and the like, left by the grandsire, in the same mode with property acquired by himself; agreeably to the text (Book II, Chap. IV, v. 13), "of precious *metals* or stones, of pearls, coral, and other move-"ables, the father has power to give or sell the whole." Such is the opinion of Jímútaváhana and others. The texts of Baudháyana (XL), and others suggest equal partition among sons, and a greater share for the eldest. In applying the text of Cátyáyana (XXVII), those of Baudháyana and the rest must be excepted in the cases stated by Raghunandana and others, when filial piety, a large family to maintain, inability to earn a livelihood, or other allowable circumstance justifies unequal distribution; or when disrespect or hatred towards the father, or other *bad quality*, justifies total exclusion. It should not be argued, that the phrase, "without a sufficient cause," intends those virtues which constitute the seniority of sons. A father has power to give greater shares to sons who are eminent for piety or the like, though not endowed with such virtues; for Náreda (XXVIII) declares a father to be destitute of such power then only when he is governed by lust, wrath, or the like. But if a malicious father do not call dutiful a son however pious, but born of an unloved wife, and *on the contrary*, call him an enemy to his father, what shall be the rule of decision? Since the father has full power over property acquired by himself; and since the greater allotment, in right of duty and piety or the like, depends solely on the option of the father; if he do not give it, who shall compel him? But if he exclude his son from a share, calling him inimical to his father, he must prove that enmity in the presence of the king, or before a public assembly, and then refuse a share; exclusion from inheritance, on his own

simple assertion, is not valid. But if he wish to allot a greater share to the son of a favourite wife, though not dutiful, calling him pious, on account of his mother, he can only give that greater allotment after proving the fact *asserted*.

A father has dominion over property acquired by himself: should he give no share to any one son *though* guilty of no offence, and give a share to one guilty of offences, who shall punish him? It cannot be affirmed, that, under the authority of the texts cited from CÁTYÁYANA and BAUDHÁYANA, the king may punish such a father. The law propounds the moral offence committed by a father slighting such precepts, but ordains no fine; like the giver of gold to an improper object, *thereby committing an offence, but incurring no civil penalty*. When this *seeming difficulty* is proposed, some lawyers reply: since the son has a title in the father's estate at the very moment of his birth, without any other cause, (for the particle is exclusive in the text of GÓTAMA, "even by birth alone a man may gain ownership;") a father, making an unequal partition, without attending to the rules prescribed in codes of law, and giving away the joint property to any one person, shall be amerced by the king. It should not be argued from the text of DÉVALA above cited, (V), that they have no ownership while the father lives. There is no difficulty, if the want of ownership consist in the want of right to aliene *such property* at pleasure: and it is seen, that a son is incapable of aliening *wealth* at pleasure while his father lives, even though he possess *several* property: as in the text *quoted in a former book* (Book II, Ch. IV, v. 56, and Book III, Chap. I, v. 52, 1,) the phrase, "they have no wealth exclusively of their own," must be explained as signifying only that they are incapable of aliening it at pleasure: they are not destitute of ownership in such wealth; for, were it so, it would incidentally prevent religious ceremonies defrayed out of their wealth. Let it not be alleged, that, since the words "what they may gain" occur in that precept;* and since it is necessary to establish ownership, because religious rites could not otherwise be defrayed; therefore it is right to explain the text as signifying want of dependence: but in this case, since religious rites may be accomplished with money furnished by the father, there is no failure in the performance of ceremonies: why then take want of ownership as signifying want of independence? The observation of JÍMÚTAVÁHANA is therefore justified. Since some title must be established, because the texts of law which forbid unequal partition would otherwise be irrelevant, therefore, in this place also, the term "want of ownership" must, from parity of reasoning, signify want of independence. Nor should it be affirmed, that the law merely shows a spiritual offence in making unequal partition, as in neglecting a priest who attends in consequence of an invitation to assist at a *śráddha*: the priest, who attends, has no property in the food provided for that celebration, *though it be immoral to withhold it*. The text of NÁREDA (XXVIII) shows, that, if an unequal division be made by a father, it is invalid. If unequal partition be erroneously made by the owner, and his own property be immediately devested by his volition, and property vested in all the sons, or in him who receives the greater portion, what useful consequence could

* These words do not occur in the text cited: I suppose an allusion to the text of NÁREDA (Book III, Ch. I, v. 51,) which differs from that of MENU (v. 52 1, of the same chapter,) in substituting the word now quoted, *arjayanti*, they acquire or gain, for *samadhigachch'hanti*, they earn. Or else it is an error purely accidental, after citing a text of MENU, to refer to a similar text of NÁREDA. T.

follow from the consideration, that the father had no power to make such a distribution, *which, nevertheless, would remain in force ?* Therefore is the title of sons to their father's wealth, even during his life, *admitted;* but not the power of aliening it at pleasure. Accordingly the text *cited in a former book* (Book II, Ch. IV, v. 14) is pertinent in its literal sense: conceiving, that the consent of the son is presumed in the case of precious stones, pearls, or other things, which have no long duration, being given away by the father, this is propounded in respect of immoveable property; and the practice is such. Nor should it be argued, that a son cannot have property in the estate while the father lives, since it has been established that one property resists another concurrent title, lest property, by occupancy, should arise in respect of a chattel not abandoned by its owner. It is admitted, that thieves and the like have property, by occupancy, even in a chattel which was not abandoned by the owner. Or supposing it true, the difficulty is removed by affirming that one property only resists an incompatible property. The title of three descendants, during the owner's life, is mentioned by BAUDHÁYANA (III), not as producing property *immediately* vested in the son or other heir, but as producing a right which entitles him to aliene it at pleasure, but which takes effect only after the father's property has expired. Thus they resolve the seeming difficulty.

But that is wrong; since there is no authority for establishing such property within *property;* and the law of equal partition (XL) bears a different import. For example; equal partition may be *considered as* preceptive, like the maintenance of the family out of a man's own wealth. Thus the support of a married daughter residing in her father's house (for so the term is explained by VIJNYÁNÉSWARA) is approved by YÁJNYAWALCYA (LXXVII), although she have no title to the estate; and there is no difference, so far as proof of property is concerned, between *the* enjoyment *of a maintenance* and the receipt of a share. VÁCHESPATI BHATTÁCHÁRYA and others also do not admit the son's vested title in the paternal estate during his father's life.

LXXVII.

YÁJNYAWALCYA :—After assigning a sufficient support to infants, to a married daughter residing in the house of her father, to aged persons, pregnant women, persons afflicted with disease, damsels *yet unmarried*, guests and servants, the husband and wife may enjoy the residue.

On this subject it is said; the verb "divide" (*bhaj*), in the present title, denotes ownership depending on affinity. There is so much difference, as it relates to the thing or the person. Consequently, in answer to the question, 'what shall be equal ?' which arises on the terms of the text "equal to all," adducing the verb 'divide' or make a partition (*vibhaj*), which is found in a text of scripture "(*vibhajyát*) let him distribute, &c." partition (*vibhága*) must be affirmed to be the subject *of that epithet:* for the phrase, "when the father makes a partition among his sons," suggests property vested in the sons in right of affinity. Again; in the case of partition by a father, his property being devested by his choosing to make a distribution, and a similar title being vested in all *his sons*, the right of receiving a greater allotment accrues to the eldest, and to those who are eminent for duty and piety or the like, by consent of the rest, in conformity with the law. But

if the father make a gift to one son, in the form of a relinquishment, producing the effect of investing another with property, it is valid, like a gift to a stranger, whether the donation consist of immoveable property or the like acquired by himself, or of wealth inherited from the grandfather. However, a father, giving away an immoveable estate, which has descended from the grandfather, without the consent of his sons, incurs the guilt of a moral offence. Under the text of YÁJNYAWALCYA (XXXIII) should larger portions be assigned by the father's choice to sons eminent for piety or the like, *still* their property originates solely in their affinity. Consequently, in the case of partition by a father, both the volition of one who is undisturbed by disease or passion, and the affinity of the son, contribute to vest property. As for what is said, that, since a title in the estate of the father and grandfather is vested by birth alone, therefore the father is independent in the use of all property except immoveables, *whether he use it* for gifts made through favour, for the support of the family, for relief from distress, or for other purposes either necessary or preceptive; but he is controlled by his sons and the rest in respect of immoveable property, whether acquired by himself, or inherited from his own father or other ancestor (Book II, Chap. IV, v. 14), that is wrong: for it would contradict the text of DÉVALA, "they have not ownership, *or full dominion*, while a faultless father lives." (V).

But if a paternal grandfather make a partition among his grandsons, whose own fathers are deceased, and in that case give more than his equable share to any one grandson, because he is unable to earn a livelihood or the like, what shall ensue? From parity of reasoning, such unequal distribution is valid. In like manner, should any one grandson betray hatred of his father or paternal grandfather, he, but not his brother, shall be excluded from a share. This shall be discussed at large.

The rule of VISHNU expressing, "if a father make a partition with his sons ("XXV), and the scripture intimating partition of heritage in favour of sons, partition among sons alone is found to be mentioned: how then can a distribution be made among grandsons, by a paternal grandfather?

LXXVIII.

YÁJNYAWALCYA:—But to grandsons by different fathers shall be allotted the portions of their respective fathers.

To grandsons, of whom the fathers are different, shall be allotted portions in right of their several fathers: all the grandsons succeed to the proper shares of their respective fathers. Consequently, so many shares should be formed as there were sons of the original proprietor, and should be given to their respective sons; and let them take those shares, whether they be uterine brothers or born of different mothers, and whether they live together, or subdivide the shares according to the number of their own brothers respectively: such is the meaning of the text. This rule of adjustment is grounded on positive texts. The *Mitácshará.*

Should not this text be affirmed to relate to partition after the death of the father, since YÁJNYAWALCYA, having propounded partition among brothers after discussing that which is made by the father, subjoins this text? No; for, immediately after this text, he propounds a rule respecting partition made by a father (XCII): accordingly the text of MENU (XXIX) has a similar import. This text, therefore, being applicable to both, must be considered as relating to both *subjects*: but the text, which will be cited

(LXXXIII), concerns only partition made by a father; *since* it is placed immediately after that topic.

LXXIX.

CÁTYÁYANA:—Should a son die before partition, his share shall be allotted to his son, provided he had received no fortune from his grandfather:

2. That son's son shall receive his father's share from his uncle, or from his *uncle's* son; and the same *proportionate* share shall be allotted to all the brothers, according to law:

3. Or, *if that grandson be also dead,* let his son take the share; beyond him, succession stops.

MISRA reads *avibhactê nijê prêtê* instead of *avibhactê mrïtê putrê,* and expounds the text by supplying the word "brother" (should a brother, *being* himself *entitled to a share,* die before partition, &c.) "His son" *signifies* the son of that brother. "Fortune;" a portion. What share shall the brother's son receive? The legislator replies to that question; "his father's share." "His son," *in the subsequent verse* (LXXIX 3), *signifies* the great grandson of him whose estate is distributed. Hence the estate of the householder shall be divided according to the number of sons. The share, therefore, which is allotted to a son, shall be received by his son or grandson, not by his great grandson; for beyond the son's grandson succession stops. This relates to parceners living together.

It is proper in this instance to explain the word "himself" (*nija*) the person who receives a share of the estate, whether son or brother: else the text could not relate to the case of partition made by a father. It is not his meaning that the text relates not to partition by a father; nor does the text contain the word "brother."

"Before partition," or literally "undivided," denotes one with whom partition has not been made. May not strangers be proposed as undivided persons? No; for the term is used with reference to the right of partition; as the word *d'hênu* (sucked) signifies a *milch* cow, and *pancaja* (produced in mud) signifies a lotos: and the right of partition consists in the relation of the son to the original possessor and the like. Even the son of the daughter of a man who leaves no male issue, and the son of a mother's sister, are not intended by the term "undivided," since they belong to other families. Or, in other instances, the term 'co-parcenary of undivided persons,' signifies the joint ownership of the same thing; but here it bears a literal sense, and strangers are excluded by the subject, namely, "son:" a son may be truly said to be unseparated from his father.

"Provided he had received no fortune" (LXXIX 1): otherwise, if the original proprietor, having made a partition among his sons or grandsons, live reunited with some of his sons, partaking of the same food with them, and if partition be again proposed after a great lapse of time, a share would be due to his grandson, even in this partition, as in the former distribution. If the reading cited in the *Retnácara* be followed (*avibhactê mrïtê putrê*), the legislator, having so far propounded partition by a father, proceeds to the subject of partition among brothers; 'he shall receive his father's share; or, should he be dead, his son shall take that share:' the text must be so

supplied. But CHANDÉSWARA says; 'If any one of the brothers be living, the son of that brother shall have no share.'

LXXX.

DÉVALA:—As the suspended water-pot matures the *pippala* tree, so a father, a grandfather, and a great grandfather cherish a son from the moment of his birth,

2. With honey, flesh-meat, pot-herbs, milk and milky food; *reflecting*, "he will give us the annual *śráddha*, and that which is offered under "the lunar asterism *Mághá*."

From this text of DÉVALA, JÍMÚTAVÁHANA argues, in the section on Partition among Brothers, that 'sons and the rest of three persons have an 'equal title to the succession, because they equally confer benefits on the 'person from whom they inherit: their title is not successive in the order of 'proximity, the title of the grandson on failure of a son, and the title of the 'great grandson on failure of a son's son. If that be the case, have a 'grandson and a great grandson, although their own fathers be living, a 'title to the succession? No; for they do not confer immediate benefits, 'since they are not entitled to offer the double set of oblations. If one son 'have left three children, and the other son be living, then, on the supposi'tion of equal benefits conferred, would not the estate be divided into four '*equal* shares? No; since the right of sons is grounded on their birth and 'relation to their father, their sons can only have a claim to so much as 'they were themselves entitled to; the three *grandsons* have a right to one-'half of the estate, and their uncle to the other half.' To this it may be objected, that, if there be two sons, and one has a grandson whose own father is deceased, why should not that grandson, succeeding to his deceased father, have a title to a share of the *common* estate, although his own paternal grandfather be living. Again; the male issue of a son, who is become a recluse, would have no title to succession. It should not be affirmed, that a great grandson, whose own father is deceased, deriving his title through his own grandfather, can only have a right to the property which accrues to that ancestor, and is debarred by its being vested in his grandfather. There would be no ground of choice (on JÍMÚTAVÁHANA'S supposition) whether property should vest in the son or in the great grandson. In the silence of the law, it would not be possible to establish the superior right of the son.

LXXXI.

DÉVALA:—Partition of heritage among undivided parceners, and a second partition among divided relatives living together *after re-union*, shall extend to the fourth in descent: this is a settled rule.

This text may also relate to partition by a father, in this manner: among undivided parceners, between whom no partition has taken place, and among divided relatives, who have received a distribution, but who are reunited and live together, partition, and *in the last case* a second partition, may be made with the original owner or his issue, as the case may be, as far as the fourth in descent or great grandson of the original owner. "Second" does not relate to partition among undivided parceners; for it is a rule, that an epithet which is liable to objection is superfluous.

LXXXII.

Dévala:—So far, *namely, as far as the fourth in descent,* relatives are *sapindas,* or *connected by funeral oblations;* beyond him the funeral cake is rescinded: Sages declare partition of inheritable property to be co-ordinate with the gift of funeral cakes.

"So far," as far as the fourth in descent, relatives, or persons sprung from the *same* family, are *sapindas*: for example, one gives the funeral cake, the other three receive the oblation: hence there is a mutual connexion, by the gift and receipt of funeral cakes, between four persons. And this connexion of *sapindas* regards inheritance; but the connexion of *sapindas,* in respect of impurity by reason of the dead, extends to the seventh in descent, including the ancestors, who partake of the rice wiped off the hand with which the funeral balls were offered.* This shall be discussed in its place; of what use would be a misplaced disquisition? "Beyond him, (beyond the fourth in descent,) the funeral cake is rescinded;" for there is not, between more distant relatives, the mutual connexion of giving and receiving the funeral balls. We thus expound the text.

"Sages declare," &c.; they declare the succession of inheritable property to be co-ordinate with the gift of funeral cakes. Consequently, he who offers the double set of oblations, and the funeral cake, succeeds to the heritage. But Chandéswara says, 'this text is applicable when, partition not having been made, property, not enjoyed by one co-heir, is solely enjoyed by another residing in the same province.' It should be here remarked, that if a son die after partition, but some property remained in co-parcenary, a share of that undivided property must be given to the son of the deceased when a partition of it is made.

LXXXIII.

Yájnyawalcya:—When the father makes an equal partition among his sons, his wives must have equal shares *with them,* if they have received no wealth either from their lord or from his father.

If he make an equal partition among his sons by his own choice, he must give equal shares to such of his wives also as have no male issue.

The *Dípacalicá.*

Hélàyudha says, 'Wives who have no sons are here intended.' And Jímútaváhana also concurs in that opinion.

LXXXIV.

Vyása:—But the wives of the father, who have no sons, are declared entitled to equal shares *with the sons of other wives:* and so are all the wives of the paternal grandfather; they are pronounced equal to mothers.

"Of the father;" the sixth case with the active sense: 'a partition being made' must be supplied. Consequently, a partition being made by a father, his wives, who have no sons, are declared entitled to equal shares. Such is his (Jímútaváhana's) opinion; and Raghunandana and others

* Menu, Ch. III, v. 216.

concur in the same interpretation. It should not be argued, that the construction of the text is, "the wives of the father;" and consequently, when partition is made by sons after his death, the wives of their father, who have no male issue, namely, their step-mothers, shall have equal shares; and the text therefore relates to partition made by sons. When partition is made by sons, the law does not allot a share to the step-mother, who has no male issue. Nor should it be argued that this text of VYÁSA is alone an ordinance of sufficient authority. There is no difficulty in referring it to partition by a father. Nor should it be argued that the text of VRĬHASPATI (LXXXV) is an ordinance of that import, both dam and mother (*jananì and mátri*, genitrix et mater) being insérted to evince that both mother and step-mother are meant.

LXXXV.

VRĬHASPATI:—On the death of the father, the mother (*jananì*) has a claim to an equal share with her own sons; *his* mothers (*mátarah*) take the same share; and the *unmarried* daughters each a fourth of a share.

Since the word "mothers," requiring elucidation (mothers of whom?), might first suggest "son" for the answer, because he is the *most obvious* agent in the sentence (as in the phrase, 'he, *the son*, behaves with piety towards *his* mother'); yet, as the same sense has already been obtained from the former part of the sentence, "on the death of the father, the mother has a claim, &c.," father, being the subject of the text, occurs for the answer to the question, 'mothers of whom?' Consequently, the wives of the paternal grandfather are entitled to equal shares with his grandsons; for this corresponds with the text of VYÁSA (LXXXIV). Thus, according to JÍMÚTAVÁHANA, RAGHUNANDANA, ŚRÍ CRĬSHNA TERCÁLANCÁRA and the rest, when partition is made by a father, a share equal to that of a son must be given to the wife who has no son, not to her who has male issue; her son should be considered as alone entitled to *share in* the partition: this, *they think*, agrees with common sense. But, when partition is made by sons, no share need be allotted to the step-mother, who has no male issue; but food and raiment *must be assigned*, for the late owner of the property was bound to support her. HELÁYUDHA and the author of the *Dípacalicá* concur in opinion, that, when partition is made by a father, no share shall be allotted to the wife, who has a son; but the author of the *Dípacalicá* does not hold, that no share shall be allotted to the step-mother, who has no male issue, when partition is made by sons. CHANDÉSWARA says, 'when partition is 'made by sons, a share must be allotted to the step-mother, who has no 'male issue: the particle "but" (LXXXIV) has the sense of also; consequently the wives who have, and those who have not, sons, are entitled to 'shares.' MISRA delivers a similar opinion; and ŚÚLAPÁNI also remarks, 'the wives of the father must receive equal shares,' from the sons of course.

Since it might coincide with the text of YÁJNYAWALCYA, "the mother of sons making a partition after the death of their father shall also take an equal share," it might be questioned, whether the term "wives of the father" (LXXXIV) mean the mother of the sons, expressed in the plural number by way of allusion to marriages contracted in various classes. It could not be said, that "mother" in the text of YÁJNYAWALCYA signifies both natural mother and step-mother. A word cannot be admitted in a

primary and secondary sense at the same time; for it is a rule in philology, that a word, uttered but once, conveys but one meaning. Is it not for the purpose of obviating this doubt, that the legislator adds, "who have no sons" (LXXXIV)? And the construction preferred by JÍMÚTAVÁHANA and the rest, which recites, "partition being made by a father," should be alone admitted. If this be alleged, it is denied; for it is a rule, not to deduce from other texts the explanation of a clear precept; and it would be therefore wrong to remove the term "who have no sons" from its natural and near connexion in the sentence, to construe it with the word "wives," *at the same time* separating this from the words "of the father." Again; the last half of the text of VYÁSA must be considered as relating to partition among brothers after the death of the father, since it contains the term "wives of the grandfather." Consequently, the first hemistich relating to partition by a father, and the last hemistich to partition made by sons after the death of the father, the text would be carried out of the due path. Mother, in the phrase "equal to mothers," requiring the son for the person who makes the distribution, and who gives a share to the wife of the grandfather, and his mother's share not being specified in the text, there would be the additional trouble of seeking the following text of another Sage: "the mother shall take an equal share with her sons, after the death of her lord."* Nor is there anything inconsistent with the text of YÁJNYAWALCYA; for in many instances† the word "mother" is employed in the sense of step-mother. Nor is this construction liable to the objection of a word being used in two senses at the same time; for the word is accepted in one sense only, 'wife of the father,' a secondary sense without abandoning the natural meaning; as in the example, 'preserve the curds from the crows,' *that is, from any animal which might destroy them.* ŚÚLAPÁNI, in the *Dípacalicá*, commenting on the text of YÁJNYAWALCYA, cites the text of VYÁSA as bearing the same import. Accordingly, in the text of VRÍHASPATI, "natural mother" (*janani*) is used in the singular number, because she, who bore the son, is individual; and since step-mothers may be numerous, the word "mother" (*mátri*), denoting the step-mother, is used in the plural number (*mátarah*): and there "mother" (*mátri*) signifies step-mother only, bearing a figurative sense, wherein the natural meaning is abandoned; and the preceding phrase is added, to remove the doubt whether the natural mother be alone entitled *to a share*, since "mother" (*mátri*) might signify natural mother only; in the same manner as the term "those who have no sons," is added in the text of VYÁSA. CHANDÉSWARA, commenting on the text of VRÍHASPATI, says, "natural mother" (*janani*) here signifies her who has a son; and mothers (*mátarah*), wives of the father. VÁCHESPATI MISRA expounds "on failure of him," on the death of the father (LXXXV); "natural mother" (*janani*), she who has a son; "mothers" (*mátarah*), step-mothers who have no male issue: all these shall have equal shares with the sons; and unmarried sisters shall have each a quarter of their brother's share, to defray the expenses of their nuptials. The claim to an equal share with the sons must be considered as a derivative title, arising out of another absolute title, in this mode; whatever would have been their shares had they sons, the same shares shall they receive *if they have no male issue*. Consequently, if a priest have a

* See a note at page 246.

† An instance is given, but I do not recall the remainder of the text, without which the quotation cannot be confidently translated. T.

barren wife of the military class, three shares must be *severally* allotted to the sons of the *Bráhmeni* wife, but two shares to the *Cshatriyá* wife, and so forth. VISHNU, omitting the word "equal," and using the word "proportionate," makes this evident.

LXXXVI.

VISHNU:—Mothers take shares proportionate to the shares of sons, and so do unmarried daughters.

On this JÍMÚTAVÁHANA has remarked, *that mothers take shares* in proportion to the shares of sons: as the shares allotted to sons are four, three, two, and one, in the direct order of the classes, so are the *same* shares also allotted to wives *of the same classes.* Else it would have been said, whatever shares are allotted to the sons, the same shall be also allotted to the wives. By the expression 'the shares allotted are four, three, two, and one, in the direct order of the classes,' it is intimated, that, as the *Cshatriyá* son of a *Bráhmana* shall take three shares, so shall the *Cshatriyá* wife. However, this text is propounded as applicable to the case of partition by a father. The distribution of four, three, two, and one, shares, will be subsequently discussed.

'And unmarried daughters take shares proportionate to those of sons:' such is the construction of the text. Consequently, since it has the same import with the text of VRÍHASPATI, they *each* receive the quarter of a share. By saying 'in proportion to the shares of the sons,' it is expressed, that a virgin shall receive a fourth of such share as would be allotted to a son of the same class with that from which she sprang.

Again; the annexing of the epithet "childless, *or* who have no sons," is considered as groundless by the author of the *Dípacalicá*, by HELÁYUDHA and others; but that is not affirmed by VIJNYÁNÉSWARA, CHANDÉSWARA, VÁCHESPATI MISRA, and the rest. It is, consequently, their opinion, that when partition is made by a father, even the wife, who has sons, may claim a share. But some think the opinion delivered by the author of the *Dípacalicá* consistent with the reason of the law; since the particle "but" in the text of VYÁSA is exclusive; therefore, as no share should be given to her, who has male issue, when partition is made by sons, so, from parity of reasoning, *none should be given* when partition is made by the father. It should not be argued, that, according to the opinion of CHANDÉSWARA and the rest, the words "after the death of her lord," in the text quoted by JÍMÚTAVÁHANA,* and, "if the father be dead" in the text of CÁTYÁYANA are unmeaning, since it is directed, that a wife, whether she have, or have not, male issue, shall take an equal share with the sons, whether their father be living or deceased. If the father be living, greater or less shares are received through his choice, in proportion to duty or piety, and the like; but, after his death, equal shares alone are received, without attending to the duty and piety of sons, or the like: and in the case of par-

* Expecting the texts to be cited at large in other places, I had here omitted these imperfect quotations; but I now subjoin them in this note.

Text quoted by JÍMÚTAVÁHANA: The mother shall take an equal share with her sons after the death of her lord.

CÁTYÁYANA: And the mother shall have an equal share with her sons, if the father be dead. T.

tition by a father, wives are entitled to equal shares compared with each other; but in the case of partition made by sons, they are entitled to equal shares with the sons. In this and other circumstances, there is much difference. Consequently, the variance of these two opinions consists herein: according to CHANDÉSWARA and the rest, whether partition be made by the father or by his sons, equal shares must be allotted, conformably with the law, to the wives who have no male issue, as well as to those who have sons; according to JÍMÚTAVÁHANA and the rest, when partition is made by a father, an equal share must be given to the wife who has no male issue; and when partition is made by sons, to the natural mother of those sons. The question should be examined by the wife.

These must only be allotted, if no female property have been given; for the remaining hemistich expresses, "if they have received no wealth," &c. (LXXXIII): *but* if female property have been given, an equal share completed by including that property must be allotted, in the manner ordained in the following text of YÁJNYAWALCYA.

LXXXVII.

YÁJNYAWALCYA:—To a woman, whose husband marries a second wife, must be given an equal present on that second marriage, *or equal to what the new wife shall receive on her nuptials*, if she had herself received none of the wealth usually given to women; but if such wealth had been delivered to her, she is held entitled only to a moiety or part *of the gift at the second wedding*.

By one who desires a second marriage, an equal present must be given to satisfy the former wife; as much as is settled *for the new wife*, not more nor less. But if she had already received such wealth as is usually given to women, from her husband's family (for the text coincides with the preceding), then a moiety, that is, less, shall be given: the equivalent present shall be completed by including the female property received from her *husband's* family. Since it is a rule, that an exposition of law, affirmed in one case, shall be extended to others, unless some impediment occur; and since it is necessary to satisfy the question, what should be done when female property has been already given? therefore should the same be established in the present case. Moiety (*ardha*), in the masculine gender, signifies part in general, not equal part or exact half, which is signified by the same word in the neuter gender. SRÍ CRISHNA TERCÁLANCÁRA says, 'as much should be given to the superseded wife as to the second wife.' But VIJNYÁNÉSWARA thinks, the word "equal" signifies so much as is expended at the second wedding. Both conceive, that whatever has been promised, which is fit to be given, must be delivered, provided the promise were not made under the influence of lust, wrath, or the like. The gift of less, or of a moiety, is improper; for a text shows, that a promise legally made in words, but not performed in deed, is a debt of conscience in this world and in the next (Book II, Chap. IV, v. 46 and 44.) This should be discussed in the chapter on the Property of Women.

"His wives must have equal shares" (LXXXIII). Equal shares with whom? To this question JÍMÚTAVÁHANA and RAGHUNANDANA reply, 'equal shares with the sons.' For JÍMÚTAVÁHANA observes, 'an equal division being made by the father among his sons, all his wives must have equal

shares.' RAGHUNANDANA says, 'the legislator ordains, that, when partition 'is made by a father, an equal share with the sons shall be allotted to the 'wife, who has no male issue.' Their meaning is this: the former text (XXVI) presenting this sense, "the father may divide the estate among all "his sons in equal shares," *or, in other words*, give one son an equal share with another son, it is proper in the present instance to assume the construction therefrom, since it readily presents that allusion. In like manner, when partition is made by sons after the death of the father, a complete share must be allotted to a mother, who has already received such property as is usually given to women, including in that share such several property; for it is a rule, that an exposition of law, affirmed in one case, shall be extended to others, unless some impediment occur.

Should the father, by his own choice, give equal shares to all his sons, his wives must have equal shares with his sons, if they have received no female property either from their lord or from his father; but if such property have been given, a moiety *or other part* of a share will be ordained (LXXXVII). If he allot an excellent share to the eldest son and so forth, his wives shall not have such excellent shares and the like; but, after setting apart the deducted allotments, they shall receive equal shares together with a deduction, as ordained by APASTAMBA (LXXXVIII).

The *Mitácshará.*

But others explain the phrase, "wives must have equal shares," 'they 'must have equal shares with each other. If female property have been 'given to one wife, the others must also have equal presents. Shall equal 'sums to that which had been already given to one wife, be given to the 'rest? or shall any additional sum be given to the first, and greater sums 'to the rest, *for the purpose of equalizing their allotments?* The difference 'depends on the choice of him who makes the distribution of property 'acquired by himself; and the same will be also established in the case of 'property inherited from the paternal grandfather. Such is the mode of 'interpretation approved by CHANDÉSWARA, VÁCHESPATI and the rest. But 'it should be remarked, that, when no several property has been given to 'any one wife, then wealth must be given to all the wives, so that their 'shares be equal.' They conceive, that "equal shares" in this, as in the former text (LXXXIII and XXVI), should be argued to signify equal to each other: but the present text contains a special rule, that shares, equal to each other, shall be allotted, including such wealth as is usually given to women.

The opinion of JÍMÚTAVÁHANA is accurate; for the shares of wives are ordained equal to those of sons; and when partition is made by sons, the share of the mother is shown equal to that of her son. On the other exposition, an honest man finds no certainty what sums ought to be given to the wives.

"From her lord, or from his father," (LXXXIII): this is a mere instance, comprehending his grandfather, mother and the rest. The meaning is this: when she has received, from any person, wealth, which should *ultimately* have accrued to her husband, that shall be included in completing her allotment; but if she received it from her own father or other relative, or from the maternal uncle or other *collateral* kinsman of her lord, such wealth shall not be included in her allotment, because it was exclusive of his claims. Such is the method *of interpretation* consistent with common sense. The completion of a share does not follow from this text of YÁJNYA-

WALCYA; for he delivers the exception in general terms, "if they have received no "wealth," &c. (LXXXIII): but it follows from the text, which contains the word moiety (*ardha*) in the masculine gender, *and therefore signifying a part in general.* Consequently YÁJNYAWALCYA excepts from the delivery of a full share, such wives as had already received female property.

MISRA has explained the use of the word "when" in this text (LXXXIII); 'but when he reserves the greater part of his fortune, and 'gives some trifle to his sons, or takes a double share for himself, the husband 'must give so much wealth to his wives out of his own share alone; accord- 'ingly the separate delivery *of shares to wives* is only ordained when he 'makes an equal partition.' His notion is this: when a father makes an equal partition, his wives must have equal shares; but when he does not make an equal partition, he need not allot a share to his wife, but *shall support her* out of the wealth which he reserved for himself; and equal partition signifies the allotment of equal shares to his sons and himself. This is liable to objection: for three cases have been propounded (XXVI), and the allusion to the last case would alone be relevant. It should not be affirmed, that equal shares allotted to the father and to his sons are intended: for it is declared, that he may reserve the greatest part of what he acquired; and two shares of the patrimony inherited from the paternal grandfather will be ordained *for the father who makes a partition.* As for what is said by JÍMÚTAVÁHANA, that the *natural* father of a son begotten on an appointed wife shares equally with the son; that is not contemplated in the text of YÁJNYAWALCYA (LXXXIII). Were it so, there would be an impropriety in abandoning the principal *form* of partition suggested by the general designation, to consider the text as propounding the succession of the father of a son begotten on an appointed wife. Consequently the text only signifies, that all the sons have equal shares with each other: the double or single share of the father follows only from the texts of other Sages. If he give so much wealth out of that which he reserved for himself, does he not give a share to his wife? and, in the case where a double share is received, a father who had many wives would be nearly reduced to indigence.

But CHANDÉSWARA observes, 'when the father allots equal shares to 'his sons, his wives also must have equal shares: and this *is true* when the 'patrimony inherited from the paternal grandfather is divided, and marriages 'were only contracted with women equal in class; or when property acquired 'by the father himself is distributed without attention to the duty and 'piety of the sons and so forth. But when the patrimony inherited from 'the paternal grandfather is unequally distributed with due attention to 'the class of wives, or when property acquired by the father himself is 'unequally divided with attention to the duty and piety of sons and so 'forth, wives also shall receive unequal shares in right of their class, or in 'right of duty and piety or the like: and that is nearly, but not rigidly, 'exact; for, if there be five sons born of the *Bráhmenì* wife, and there be 'one *Cshatriyá* wife, and, in such a case, if certain sons be unable *to earn a 'livelihood,* and all the wives be dutiful or all undutiful, or, in the same case, 'if the latter circumstances be reversed, then common sense shows it proper, '*in the one instance,* to allot equal shares to the wife *of the same class,* 'and to wives *different in class,* while the sons have not equal shares, or, *in 'the other instance,* to allot unequal shares to the wives, while the sons 'have equal shares.'

An observation should be here made: if the father divide the estate among his sons in equal shares, (*or, in other words,* if he take one or two shares for himself, and give similar allotments to his sons,) or give greater portions in right of transcendant virtue as the law directs, he must allot one share to each of his wives out of his own ascertained wealth; but if he reserve the greatest part of an estate acquired by himself, he must defray the nuptials of his daughter, and support his wife out of his own wealth, *which he reserved:* he ought to retain a sufficient sum for those purposes. Such is the method indicated by VÁCHESPATI MISRA.

The word 'wife' (*patní*) in this gloss [of CHANDÉSWARA] denotes the eldest wife; for it is so employed: eldest wife means her who is equal in class. No author has used the term to denote wife in general, *or of any class.* However, since the espousal of a wife unequal in class is prohibited in the *Cali* age, the case does not now occur. I have not mentioned the subject of my own accord; but every subject which has been treated by Sages and Authors, is briefly discussed in a few places, for the purpose of expounding their texts, and elucidating their works.

Whether the share be equal with that of the son, or with that of another wife, are wives entitled to the use only of the share which they receive, or have they independent power over it? To this question some lawyers reply: although sons had no previous ownership in their father's estate, yet, as they have independent power *after partition,* since the *father's* property is devested, so wives also have independent power; for a text declares, that property is common to the husband and wife (CCCCXV), and she therefore had ownership even prior to this partition: and, that being the case, her gift of such property is valid, even without the assent of her lord; and when she dies, it devolves on her own son alone, not on a son born of another wife. Under the text which ordains the dependence of women (Book IV, v. 5), and that which declares property common to the husband and wife, is not a wife owner of such wealth, and at the same time dependent in respect of it; and accordingly she has then no power to give or sell her own due share? It should not be affirmed, that, since partition between husband and wife is not admitted, there cannot be any due share belonging to her. In the case of partition during the life of the father, this text propounds the shares of the husband and of the wife; and the term 'partition' denotes several property predicated of one person alone. If it be affirmed, that, since an allotment of wealth to the wife is directed then only when partition is made on account of the sons, and since partition between a childless husband and his wife has not been propounded, she can have no claim to partition; but, a distribution among sons being undertaken, a maintenance alone is assigned to the wife, from the apprehension, "should all the property be dissipated, where and how could my wives be supported?" And the amount of that alimony is fixed at a sum equal to the share of sons and of other wives: *if this be affirmed,* then surely she has no power to give away, or otherwise aliene, her alimony; her husband is sole master of her and of her wealth, whether residing at the same or at a different place; and when she dies, the wealth assigned for her support reverts to her husband, or to his heir: her right is now, *after the assignment of alimony,* the same as before, in respect of expending wealth with her lord's consent, or keeping it, and so forth. When this *question and inference* is proposed, *the answer is,* No; for, the dominion of the wife over the whole wealth of her husband being shown by the terms of the text (CCCCXV), and her separate property, unconnected with her husband, being similarly proved

after partition, nothing prevents the validity of her gift, *or alienation* of this wealth, any more than *her gift* of her own separate property; and there is no argument to prove that the text of YÁJNYAWALCYA, which propounds partition, intends the assignment of a maintenance. Were it so, why should it not be equally true in respect of sons? Her dependence serves to impede the attainment of religious merit, by the distribution of alms, and by abstinence or the like, undertaken without the assent of her lord; and to prevent her intercourse with other men, and rambling abroad at her pleasure.

Such being the case, would her daughter succeed to such wealth on her death, if she leave no male issue, although a son born of another wife be living? No; for the text (CCCCLXXVII 2) may relate solely to property received by the wife in right of her connexion *by marriage*, as easily as it may relate to the property of the husband, in which the wife has an interest; since there is no argument, on which one meaning should be selected in preference to the other, and the right of the husband's heirs has been alone propounded. Again; the equal title of her own son, and of one born of another wife, is admitted. It should not be objected, that, such being the case, the succession to female property might accrue to them on the same grounds. In respect of such wealth as is usually given to women, a property is created, originating in gift alone; and, in this case, a property originating in a gift on account of affinity, and resisting the paramount dominion of the husband, is created, not property derived from affinity alone. Nor should it be argued that the text quoted (CCCCLXXVII 2) concerns only the succession to the estate of one who leaves no son. There is no argument, on which such an interpretation can be established: although it be inserted under the title of Property left by one who has no son, still that interpretation is opposed by proofs drawn from analogy. Nor should it be objected, that, since the share of a wife is in a manner *gratuitously* given, it ought to be held similar to female property. Being received in right of *the* relation *of a wife to her husband*, it is justly considered as similar to connected property, *or wealth devolving on heirs in right of affinity*. Since a wife has an interest in the whole of her husband's estate, the father's wife, whether she have, or have not, male issue, is entitled *to an allotment*, when partition among sons is undertaken after the death of her lord. Accordingly CHANDÉSWARA and the rest hold, that shares must be allotted to them: and hence, the text, "after the death of the father and mother, &c.," (IV), showing that sons do not completely succeed to the estate while the mother lives, declares them unentitled to *make* a partition *without her consent*. Were it so, since the husband would not be qualified to make a partition without the assent of his wife, would it not follow that no partition could be then made by a father? No; for the right of the wife, originating in the right of the husband, is subordinate thereto. Accordingly, when the patrimony left by the paternal grandfather is divided, the allotment of a share to the wives of that ancestor is ordained. Modern lawyers hold, that shares must in that case be allotted even to those wives of the paternal grandfather who have no sons. When property left by the paternal great grandfather is divided, should not a share be allotted to his wife? That is admissible from parity of reasoning; and the particle in the phrase, "and wives of the grandfather" (LXXXIV) connects the terms with what is *understood, but* not expressed. As for what is deduced from the law, that no share should be allotted to the wife unless partition be made among sons, it is founded on the independent

authority of scripture, *that is, on the letter of the law;* else, according to your opinion, since there is no distinction in their want of ownership, the reason of the law must be shown for this maxim, 'that partition shall be made on account of the son, not on account of the wife.' Let it not be objected, that the authority of scripture should be acknowledged *as the foundation of civil law* in every case. When the reason of the law is *apparent,* it would be wrong to abandon it. Accordingly YÁJNYAWALCYA declares, "if two texts of law differ, reason, *or that which reason best supports,* must in practice prevail." As for what is argued, that, when the husband's property is devested, the property of the wife, originating therein, is also annulled: here are no grounds for this induction; for there is no ordinance to that effect, like the text (CCCCXV), which serves to prove the right of the wife to be co-existent with the husband's; and property is not devested, when the act which created it is past; else, the property of the donee would be annulled so soon as the acts of giving and accepting were past. In like manner, a thing given, at the time of partition, to a wife, a mother, a grandmother, and a great grandmother, cannot be aliened or sold by the husband and the rest; but the gift or other alienation by the wife or owner is valid.

Such is the answer given by some lawyers to the question proposed: and that is not unacknowledged by BHAVADÉVA. He says, 'in fact wives 'have an interest in their husband's estate, under the text which declares 'property common to husband and wife; and by the authority of texts, if 'there be a son, a son's son, or a great grandson, since these offer the 'double and single sets of funeral cakes, a share must be allotted to them, 'as *having* equal *pretensions* with the mother; but, on failure of them, 'wives alone succeed to the whole estate: this must be admitted by the 'wife.' Although the mother survive, the son has property in the paternal estate after the demise of his father, of whom the principal right was predicated; and the mother's right, which is subordinate, neither resists nor is resisted by any other. Accordingly, though the first wife have property *in her husband's estate,* another, *subsequently* married, has also property *in the same.* The author of the *Mitácshará* likewise admits the ownership of the wife in the whole of her husband's estate; and he therefore admits partition with the wife, so that it be made by the choice of her husband, not by her own. He has not said, that a maintenance only shall be assigned to her. However, he has directed that a deducted allotment shall be also given, as ordained by the text of 'APASTAMBA.

LXXXVIII.

'APASTAMBA:—The furniture, the house, and the ornaments shall be allotted to the wife.

Hence the gift, sale, or other alienation of her own share, by a wife, is valid. However, since women are not independent, that gift is immoral. This opinion is so proved. But to that VÁCHESPATI BHATTÁCHÁRYA does not concede; because the assertion, that a share is given to wives, mothers, and the rest, in right of a property *already vested,* is not accurate. For, were it so, a share of property, inherited from remote ancestors, must be given to the grandfather's grandmother and the rest. Or, even granting that a share must be given to those matrons, if they have not already received any allotment, then, should a childless *Bráhmana* leave a *Vaisyá* wife, she would also receive a share when partition is made among his uterine kindred, who are alone entitled to the succession: and, were it so, a

new practice, not approved by any author, would be introduced. As it is admitted that the natural mother of an only son shall receive no share, since it has not been ordained by the text of any Sage, so it is reasonable that no share should be allotted to a great grandmother. As for what is affirmed, that a wife has a secondary claim on the whole of her husband's estate under the text which declares property common to husband and wife; be it as it may, according to the opinion of those who contend for her several property, still partition is not made in right of that property, but partition between husband and wife must be reconciled like that between father and son. When partition is made among sons, a share is allotted to the mother, for the sake of natural affection, to establish the validity of the son's share, and for the sake of independence: if the share allotted to a wife or mother be consumed in her support, she is entitled to receive alimony from her husband or son; for, at all events, she must be maintained: but if a surplus remain above the consumption, and the husband's wealth be wholly dissipated, he may, by parity of reasoning, resume property from his wife, as *he might resume it* from his son. However, the share allotted to a wife and the rest, like that which is given to a son, may be disposed of at their pleasure. Hence, like female property, the gift, sale, or other alienation of that share is valid; for it is equally given her by her husband and the rest. Such is the just rule of decision according to both opinions. However, there is no reasoning which can show it incumbent on great grandsons, and the rest, to allot a share to their great grandmother. Consequently, when partition is made by a father, he must give to such of his wives as have no male issue an equal share with his sons; and when partition is made among sons or grandsons, they must allot to their natural mother or grandmother an equal share with themselves; but if female property have been given to any one wife by a kinsman sprung from the same race with her husband, that shall be included in completing her share. No allotment shall be given to a great grandmother. Such is the opinion of JÍMÚTAVÁHANA and the rest. But SRÍ CRÍSHNA TERCÁLANCÁRA holds, that a share must be also given to the father's step-mother. To establish this opinion, the reason of the law ought to be shown. It cannot be affirmed that the argument may be drawn from the word "all" (LXXXIV), which would otherwise be nugatory. That the word "father" would thus become unmeaning, *or would want precision*, cannot well be disproved. As for what he asserts, that the wife of the grandfather claims a share of the grandfather's estate only, still we perceive no other reasoning by which this maxim can be maintained, except a title founded on her secondary property in the grandfather's estate. That author does not admit the validity of gift, sale, or other alienation by a wife and the rest. This brief exposition may suffice.

CHANDÉSWARA and the rest differ, *contending*, that shares must be allotted to all the wives and the rest, whether they have, or have not, sons. But others hold, that the allotment of shares to wives, as directed by YÁJNYAWALCYA, is not intended for partition between husband and wife; since 'APASTAMBA forbids such a partition.

LXXXIX.

ÁPASTAMBA:—*á* Partition does not take place between a wife and her lord. *β'* From the *time of* taking her hand in marriage, her aid in *all* acts is required as well as her participation in the pure and

impure fruit *of action*, and *her concurrence* in the receipt of wealth: Sages do not deem it a theft, if a gift be made by a wife for a *just* cause, during the *absence* of her husband.*

It relates not to partition between husband and wife, for it would contradict common sense, that, living at different places, upon separate property, they should co-operate in religious rites; and *again*, because 'Apastamba shows them to be associated in the acquisition of wealth; and *lastly*, because partition cannot be effected between them, since the wife's claim on property acquired by her husband after partition could not be barred. The wife shall not daily receive a share *of the daily gain;* nor can she, after separation, have immediate power over her husband's wealth; nor can the text, which declares property common to husband and wife, be silent from the day when partition is made. Therefore, when the paternal estate is equally divided, should it be impracticable to support his wives out of his own share alone, the husband may take a share for each of his wives, and live in one abode with his wives thus enriched: their partition only takes place with his sons. Accordingly, the expression of Jímútaváhana, 'for the 'want of partition is incidentally mentioned, like the want of partition 'between husband and wife,' is censurable. On the interpretation of Jímútaváhana and the rest, is not this inconsistent with the expression "when "the father makes an equal partition" (LXXXIII); for a father receives two shares of the wealth inherited from the grandfather? No; for equal shares denotes equality with each other: and the quantity, not the number, of the shares, has been thereby restricted. Consequently, the equality of *each of* the father's two shares with those of the brethren is propounded. According to the opinion of those who contend for the equal dominion of both father and son *over property of every kind*, is not the text, which will be cited (XCII), nugatory? *No;* for that text only intimates the ownership of both; the present text (LXXXIII) implies partition. Reasoning, *say these lawyers*, which contradicts numerous authors, and sets at variance the texts propounded by Sages, is a modern mode *of exposition*.

If a man leave two wives, and by one two sons, and by the other four, partition shall be made, as abovementioned, among the brothers of the whole and half-blood; but what shares should be allotted to their respective mothers? To this Chandéswara and the rest would reply, the estate must be divided into eight shares, and two must be given to the mothers, for they are equally wives of the father; (but if any widow belong to a different class *from her late husband*, she shall receive her portion according to the share which is allotted to her own son, or which would have been allotted to him had she had one;) the six brothers take six shares. But the author of the *Dípacalicá* seems to think that no share shall be allotted to the mother, who has sons living; for he cites the text of Vyása, premising these words, 'the sage propounds a special rule.' However, Srí Crishna Tercálancára, observes in his commentary on the work of Jímútaváhana, 'both are not entitled to shares, since both are not natural mothers of all 'the sons; and the natural mother, according to Jímútaváhana and the 'rest, is alone entitled to a share.' On this it should be remarked, that a question remains, whether one wife of the late proprietor shall receive a share, because she is natural mother of him who makes the distribution, or

* Partially cited in this place. I complete the text from subsequent quotations compared with other Digests. T.

whether she shall receive no share because she is not the natural mother of a certain *other* son. According to JÍMÚTAVÁHANA and the rest, "son," in the text which will be cited,* signifying born of her womb, it is a settled rule, that a widow shall receive from sons, who were born of her, an equal share with them, and she cannot receive a share from the children of another wife; therefore, she can only receive her share from her own sons. Let it not be objected, that, were it so, the share of the one might be less than that of another brother. When partition is made, the share allotted to the mother may be formed by two operations: one share may be assigned to the son, and again a part of that share to the mother; for equal partition can be effected by this method. For example, in the case proposed, if the estate amount to twenty-seven thousand *suvernas*, a share amounting to four thousand five hundred *suvernas* being allotted to the son of her who has borne two sons, three thousand *suvernas* are set apart on one side, and one thousand five hundred *suvernas* on the other side. In that case the two parts of shares are *equal to* the allotment due to one *son;* the same is also true of the other: and the two parts become the share of the mother. The difficulty may be thus reconciled.†

If the son refuse to deliver the share of his natural mother, she may exact it even by forcible means; for the ordinance would be otherwise nugatory; the term "equal share" would be unmeaning; and the word "equal" used in a positive sense, would be futile. This inference stands uncontradicted by any author. But, at present, solely through the tenderness of the mother, such a practice does not occur.

Some lawyers hold, that when partition is made during the life of the father, he shall give an equal share to his wives, whether they have, or have not, sons: and that share is *merely* allotted for their maintenance; since partition between husband and wife is forbidden, and the text, which declares property common to the married pair, renders vain a partition which has even actually taken place. Again; when partition is made among grandsons, an equal share with themselves must be allotted by them to their father's wife, who has no male issue, and to the wife of their grandfather; not to her who has male issue, for the text of VYÁSA expresses, "but the wives of the father, who have no sons," &c. (LXXXIV). Their natural mother, most venerable, having borne them from her own body, must be honoured with all their wealth, and with every exertion of labour. And this is reasonable: since wives must have property while their husband lives, because they are associated with him, shares must be allotted by an aged father for the support of his wives; but if he reserve for himself as much wealth as he pleases, there is no occasion for such an allotment of shares. When partition is made after the father's demise, since a mother has a claim on the whole of her son's property, she may be supported out of his own share: but unless the step-mother, who has no son, receive a share, she might have no subsistence but what she obtained in alms. However, the duty of reverence towards mothers is ill fulfilled by the perverse people of the present day; for this cause, they are sometimes compelled by virtuous men to allot some wealth as a fixed share. In that case a gift

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* The compiler has omitted the text in its proper place. See a version of it in a note preceding v. 87. T.

† The author would have found the example erroneous, had he pursued his proof; for he cannot so distribute the remainder among the four sons and their mother. T.

made on temporal considerations, for a worldly purpose, by a wife or widow, and a sale or other alienation for her own pleasure, are not valid: but it is fit she should have power to give, sell, or otherwise aliene her allotment, for her own support, or for religious uses; since it was delivered to her for those very purposes.

But when the father of an only son leaves one wife, then food and vesture only shall of course be allotted to her, since no text propounds the immediate appropriation of a share; and the law has only ordained the allotment of a share to the mother or step-mother, when partition is made among sons. Again; when a distribution is made by a father, if his own mother be living, no share is ordained for her; since the law has only ordained the allotment of a share to the mother, when partition is made by sons with each other. It should not be argued, that *her participation* may be deduced from the law which ordains the allotment of a share to a grandmother, in the case of partition among grandsons. This is not partition made by her grandsons, but by her son; it is, therefore, a distribution *made* by her own son. According to the opinion of those who contend for the equal dominion of father and son over property inherited from the grandfather, there is this difference, that a share must be allotted to the grandmother, since partition by the choice of the son is admitted. When partition of property, which he himself acquired, is made by a father, the share of his wife and the rest seems to be incidentally discussed. A father may divide, at his pleasure, property which he himself acquired, *giving more to some and less to others;* or he may give the first-born the portion of an eldest son; or make all the shares equal: these three cases are considered in the *Retnácara* as *solely* relating to partition during the life of the father.[a] The text which concerns property inherited from the grandfather, shall be subsequently cited. This appears to be implied.

But some consider the first case *only* as relating to property acquired by the father; for all the cases cannot be regulated by his sole pleasure. Under this case is propounded the reservation of the greatest part of his fortune, and the unequal distribution among sons in consideration of duty or piety, and the like. Under the second case *is propounded* the allotment of an additional portion to the eldest son. The third case relates to sons equally dutiful and the like, and to property inherited from the grandfather.

What is meant by "property which the father himself acquired?" That which the father has acquired, by the acceptance of presents, by the use of arms, by agriculture or commerce, by service or gaming, without employing property left by his own father: this is signified by the term. VRĬHASPATI propounds another kind of property acquired by a man himself.

XC.

VRĬHASPATI:—Over property descending from the grandfather, but seized *by strangers*, which the father recovers by his own power, and over what he has gained by science, valour, or the like, the father has full dominion;

2. He may give it away at his pleasure, or withhold it from partition: but after his death, his sons are pronounced entitled to equal shares.

"By strangers" must be supplied. Through inability, it was not recovered by the grandfather. MISRA and CHANDÉSWARA.

And it has been gained or recovered by the father, through his own ability. The father has full dominion over such property, and over that which he has gained by science, valour, or the like. According to the interpretation of CHANDÉSWARA and the rest, the expression, 'if it were 'gained on the adventure of property left by his father, it is treated as 'property descended from the grandfather,' is truly pertinent; and, according to this interpretation, the term "by his own power" must be considered as certain and positive. MIŚRA accordingly adds, 'provided it were acquired 'without adventuring wealth which had descended from the grandfather.'

It is said, "the father has full dominion:" Has he no dominion over property which had descended from the grandfather, and has not been seized by strangers; or has he dominion but in conjunction with some other person? To solve this question, the legislator subjoins *the second verse* (XC 2). Consequently, at his sole pleasure, he may exclude from participation one who behaves disobediently or the like, and give a greater share in consideration of filial piety or the like: partition is made at a time regulated by his pleasure; and he may reserve the greatest part for himself, when property descending from the grandfather, but seized by a stranger, is recovered by him. But, in the case of property left by the grandfather, and not seized by a stranger, the father is governed by rules of law. Such is the opinion of JÍMÚTAVÁHANA and the rest. But, according to VIJNYÁNÉŚWARA and others, the father and son have equal dominion over property inherited from the grandfather, and which has not been seized by a stranger; but the father alone has dominion over that which had been seized by a stranger and is recovered by him. "After his death, &c." (XC 2); this concerns partition among brothers after the death of their father, the portion of an eldest son not being *deducted* as abovementioned.

XCI.

MENU and VISHNU:—And if a father, by his own efforts, recover *a debt or property unjustly detained*, which could not be recovered before *by his father*, he shall not, unless by his free will, put it into parcenary with his sons, since in fact it was acquired by himself.*

From the phrase, "which could not be recovered before," it follows, that it had been seized, *or was unjustly detained*, by strangers. Property of his father, so circumstanced, which the father recovers, is in fact acquired by himself; he shall not, unless by his own free will, divide it with his sons. If his own pleasure be consulted in respect of property acquired by himself, is not the rule different in respect of property inherited from ancestors? YÁJNYAWALCYA declares that rule.

XCII.

YÁJNYAWALCYA:—Over land acquired by the grandfather, over a corrody *out of mines or the like, settled on him and his heirs by the king*, and over slaves employed in his husbandry, (or over gold and the like, *for the word* dravya *is expounded variously*,) the father and the son, *when the grandfather dies*, have equal dominion.†

* MENU, Ch. IX, v. 209. From the context, it has been there translated differently: the present version is more literal. T.

† Book II, Chap. IV, v. 31.

"A corrody;" a fixed pension receivable out of mines or the like, and settled *on him and his heirs* by the king or other benefactor. "Wealth" (*dravya*), gold or the like. Over these, namely, over land and the rest, the father and son have equal dominion. Partition is made even by the choice of the son; and the shares are equal, as declared by VRĬHASPATI.

The *Dípacalicá*.

XCIII.

VRĬHASPATI:—Of property acquired by the grandfather, whether moveable or immoveable, equal shares are ordained for the father and the son.

The commentator considers "moveable" as here signifying anything not immoveable, as gold or the like. In expounding the text of YÁJNYAWALCYA (XCII) the *Retnácara* has this gloss; 'that which is fixed or made fast (*nibadhyaté*), is a corrody (*nibandha*), or fixed pension receivable out of mines or the like. "Equal dominion:" in this case no greater share is allotted to one than to another; nor can the father give away such property at his pleasure.'

XCIV.

VYÁSA:—A father and his sons shall have equal shares of a house or of land which had descended from ancestors; but, against their father's will, sons cannot claim a partition of wealth acquired by their father.

"A house or land" is a mere instance, as appears from the term "paternal," which denotes wealth acquired by the father himself. It is intimated, that, even against the father's will, partition of property inherited from the grandfather may be claimed. What will or choice is meant, shall be explained in discussing the opinion of JÍMÚTAVÁHANA and the rest. Consequently, the opinion delivered by the author of the *Dípacalicá* is correct, that 'partition of land, and gold, or the like, inherited from ancestors, may 'take place by the choice of the son; and the father and son have an equal 'right to one share each.' In the text cited by JÍMÚTAVÁHANA, (Book II, Chap. IV, v. 13) the words "neither the father," which occur in the last part of the text, bear allusion to property acquired by the father himself; nor the grandfather" is a mere instance of any ancestor, the great grandfather and the rest. It should not be alleged, that the words "nor the grandfather" are nugatory; since he or any remoter ancestor is father of his own son. Should a dispute arise between grandsons and one who affirms, "this landed property was given to me by their grandfather," the text is intended to show the invalidity of such gift. Thus some expound the law. Others argue, since the donation will be subsequently declared valid *though immoral*, the phrase must be otherwise expounded, in this mode: since the grandfather has an interest in that which is acquired during his life by his son, (Book II, Chap. IV, v. 56) and his power of aliening it might be supposed, therefore is this text propounded concerning property acquired by the father. Others again argue, that, as a man is controlled by his son in respect of immoveable property, so is he also controlled by his grandson and the rest: to intimate this, it is said, "nor the grandfather." Consequently, according to this opinion, a father is not independent in respect of precious stones, pearls, or the like, inherited from the grandfather, nor in

respect of immoveable property acquired by himself. Accordingly the text quoted in a former book (Book II, Chap. IV, v. 14,) is truly apposite; and the text cited by RAGHUNANDANA (XCV) is also pertinent.

XCV.

Uncertain :—By their father's indulgence sons consume vesture and ornaments, but let not immoveable wealth be consumed even though the father be indulgent.

According to this opinion, does the text now cited relate to property belonging to the grandfather, or to that which belongs to the father? The first *supposition* is not *right*; for the father is not independent in respect of vesture and ornaments appertaining to the grandfather. The second *supposition* is not *right*; for the practice of good men also shows validity in the alienation of property belonging to the grandfather, through *his* indulgence. To this it is answered : dominion over the father's estate during his life is not propounded, by declaring the equal dominion of father and son over property inherited from the grandfather; for that inference has been already disproved. But the father alone has absolute property; and equal dominion is affirmed to show that no unequal partition can be made in this case. Consequently, a gift made by the owner is valid, for he is not insane nor otherwise incapacitated. In like manner, by declaring that "the father has no power," &c. (XXVIII), he is prevented from making an unequal division without a sufficient cause. Again; donation and sale are forbidden, to show the immorality of the act, not to annul the gift or alienation : and that is evident on the exposition of JÍMÚTAVÁHANA and the rest. The gift of vesture and ornaments, through indulgence, is not forbidden.

Or vesture worn on the body may be compared to ornaments worn by a wife during her husband's life (CCCCLXXIII): such vesture and ornaments, used though not *expressly* given, belong to the wearer. The father infringes no prohibition; for he has not aliened them. But the dissipation of immoveable property is not legal. That is declared by the text (XCV). Consequently, this text relates both to the property of the father and to that of the grandfather.

Since a householder is not his own master in respect of what has descended from an ancestor, as declared in the text cited by RAGHUNANDANA and others (Book II, Chap. IV, v. XV, 3,); and since NÁREDA pronounces void a gift made by one who is not his own master (Book II, Chap. IV, v. LIII, 2); the gift of property, which had descended from an ancestor, being made by the father even through indulgence, should not be valid. As for what is said, that gift and sale are forbidden, to show the immorality of the act, not to annul the alienation, that is incorrect; for the invalidity of the gift is intimated even by the phrase "let not immoveable wealth be consumed." It cannot be a practical truth, that a man may not consume that of which his gift would be valid; and there is no argument by which it can be established to be a moral truth: neither, *on the other hand*, is it inconsistent with common sense. The seeming difficulty is thus removed. As for the second case, the text cited (Book II, Chap. IV, v. XV, 3,) has been otherwise expounded in the chapter on subtraction of Gift: and if any father, infringing the law, absolutely give away the whole or part of the immoveable property acquired by himself, or inherited from his own father, that gift is valid, provided he be not impelled by lust, *or* wrath, *nor act with* guile, or the like. However, he commits the moral offence of violating

the law. More on this subject shall be subsequently delivered with the opinion of JÍMÚTAVÁHANA and the rest. Accordingly it is recorded in the *Puránas* and other works, (and instances of the practice sometimes occur in certain countries,) that a king has bestowed his *whole* kingdom on a son pre-eminent in virtue, or senior by birth.

The father of an only son shall reserve two shares under the rule of SANC'HA and LIC'HITA (XLIV). The text of NÁREDA (XCVI), and that of VRĬHASPATI (XCVII), concern this very case. Thus far has been detailed the exposition delivered in the *Dípacalicá* and other works. *We* next *proceed to* the opinion of JÍMÚTAVÁHANA and the rest.

By declaring the equal dominion of father and son over property inherited from a grandfather, it is intimated, that, when one son deceased in the lifetime of his father, who is since dead, the grandsons shall take their own father's equal share when partition is made; the whole shall not be taken by sons alone, in right of proximity, nor because they give two funeral cakes, which the last possessor was also bound to offer, *namely, to his father and grandfather, whereas his grandsons only offer a funeral cake to his father.* "Grandfather" is in this place an instance merely which comprehends the great grandfather, and "father" comprehends the grandfather. The text is interpreted verbally according to the literal sense, and figuratively according to the secondary sense: and this is suggested by the coincidence of the text of CÁTYÁYANA (LXXIX). Or the interpretation, proposed by D'HARÉSWARA, may be admitted, as follows: in the case of property acquired by the father himself, unequal distribution in consideration of filial piety or the like is not immoral; but, in the case of property inherited from the grandfather, it is immoral: should an unequal distribution of property inherited from the grandfather be nevertheless made, a second partition cannot be *required*, but the father is guilty of a moral offence; as is intimated by JÍMÚTAVÁHANA *in these words*, 'unequal distribution made by a father is only lawful, *morally considered*, in respect of property acquired by himself.' Consequently, since the father has full power over wealth which he himself acquired, his unequal distribution of it is lawful; but, in respect of property inherited from the grandfather, that *unequal distribution, morally considered*, is unlawful. This appears to be his meaning. Since texts which propound a control in regard to property inherited from the grandfather, seem to intend generally moveable as well as immoveable property, YÁJNYAWALCYA (XCII) delivers a special rule to obviate that conclusion. Consequently, since the father has full power over precious stones, pearls and the like, even though inherited from the grandfather, there is no objection to his unequal distribution of such property: it is only forbidden in the case of land and the like: and the word "wealth" (*dravya*) here signifies bipeds, as slaves and the rest, for they are attached to the glebe, *being employed in the husbandry;* and slaves, as well as immoveable property (such as land and the like,) are mentioned in a text above cited (Book II, Chap. IV, v. 14). Such is the exposition of RAGHUNANDANA. In the text of VYÁSA likewise (XCIV), the terms "a house or land" comprehend a corrody, and slaves as well as immoveable property; and the term "moveable" in the text of VRĬHASPATI (XCIII) intends slaves only: this is made evident by another text (Book II, Chap. IV, v. 13). Since the word "grandfather" occurs in the text; this, *says* JÍMÚTAVÁHANA, relates to his property: and, as appears from the word "whole" repeated in that text, the gift of all the precious stones, pearls,

and the like, inherited from the grandfather, is not immoral, but a gift of the whole immoveable property is an offence. Even though the immoveable property be acquired by the man himself, it is proper to affirm, that the gift or other alienation of it is immoral (Book II, Chap. IV, v. 14). Then, what difference is there between immoveable property acquired by the father, and that which is inherited from the grandfather? The difference consists in the legality or illegality of unequal distribution in consideration of filial piety and the like. But if the whole immoveable property be given away, the consequent distress of the family, through want of subsistence, is the sole cause of moral guilt: the gift or alienation is not annulled; for it is made by an owner, who is neither insane, nor otherwise incapacitated. MENU inculcates the necessity of supporting the family (Book II, Chap. IV, v. 11).

Some incidental observations may be added. Two texts cited by JÍMÚTAVÁHANA (Book II, Chap. II, v. 6. and Chap. IV, v. 18, 5) are also intended to show the immorality of the act, not to annul the sale or other alienation; for each parcener has an uncertain interest in the whole. The sense of the text explains the cause; since one parcener has not competent power, therefore he ought not to sell or give away immoveable property, which the family hold in co-parcenary: accordingly heirs have a lien equally on the immoveable heritage, whether they be divided or undivided; that is, one has not a greater or less lien than another. "Divided" supposes the case where any part of the immoveable heritage remains in common. But, on this interpretation, we do not determine for what purpose the word "immoveable" is added. The opinion is liable to this objection: according to JÍMÚTAVÁHANA, who contends for dispersed property vesting severally in the co-parceners, there is no difficulty in not establishing that a declaration in the subjoined form does not divest property; "let this, whether it belong "to another or to me, become the property of DÉVADATTA." But that has been asserted, because NÁREDA, under the title of Subtraction of Gift, not noticing joint property among things deemed ungiven, enumerates it among those which may not be given. Hence, whether it be common to the parceners (the several property being yet unascertained by partition), or be the several property of one, the gift or other alienation of effects, made by one heir without the assent of the rest, does annul his right; but with their assent, it transfers the property of all the co-heirs. In this case, all partake of the merit *of the gift*, or share the price *of the sale*, and so forth; but, when aliened without their consent, he, who alienes it, alone incurs the moral guilt, but all partake of the loss. This is a demonstrated rule. However, if he give away that which ought not to be given, common sense shows that he shall be punished.

RAGHUNANDANA observes, 'the text cited (XCV) relates to property 'which had descended from the grandfather: that only which has been 'acquired by the father himself, and is given by him, may be consumed; 'else another foundation of law, besides scripture, must be sought.' What text of scripture can be now produced as the foundation of these laws? It should not be affirmed, that the scripture, on which the text (Book II, Chap. IV, v. 13, last hemistich) is founded, may run thus: "aliene not the immoveable property of a grandfather." A text of scripture, which prohibits the alienation of immoveable property acquired by a man himself, must also be sought for the ground of another text (Book II, Chap. IV, v. 14); and it cannot have the same import with that which forbids the alienation of the

immoveable patrimony, by showing the gift to be invalid through the medium of forbidding the consumption of the immoveable wealth (XCV). To this it is answered, RAGHUNANDANA considers this text as relating to partition of heritage, since that subject is discussed in his work both before and after the quotation of the text. Consequently, immoveable wealth inherited from the grandfather, and given or *unequally* divided through the indulgence of the father, or through his favour, in consideration of filial piety, of a large family to maintain, or of inability to earn a livelihood, shall not be consumed nor enjoyed *as so distributed;* for this coincides with the text which declares the equal dominion of father and son. But precious stones, or the like, inherited from the grandfather, and so distributed, may be *so* enjoyed; for that coincides with another text (Book II, Chap. IV, v. 13). But some think it reasonable to infer from the text (XCV), that a valid gift, sale, or other alienation at the pleasure of the father, is only unobstructed in the case of property different from the immoveables inherited from the grandfather, not in the case of land which appertained to that ancestor. That is wrong; for the term "at his pleasure," in the text of VISHNU (XXV), denoting arbitrary choice, cannot relate to the double share. But, after premising the text of NÁREDA as relating to the patrimony inherited from ancestors, the observation, that this text (XCV) concerns the patrimony so inherited, refers it to Subtraction of Gifts, which would be inelegant: and it would contradict a subsequent remark, 'because property, consisting in the power of aliening at pleasure, exists equally in this and in other wealth.' For the fifth *or ablative* case *assigning the reason*, is only pertinent under the rule, that whatever be held as property by any person, his gift of it is valid. But that rule is in this instance infringed; for, wealth left by the grandfather being held as property, the gift of it is, *nevertheless*, invalid. Let it not be argued, that, since it is necessary to suppose *in that rule* cases different from the sixteen void donations which have been propounded by NÁREDA for the purpose of annulling a gift made by an insane person, and so forth, there is no breach of that rule in this instance, because it falls within the sixteen void gifts, since the householder is declared not to be independent in respect of wealth inherited from ancestors (Book II, Chap. IV, v. 15, 3.) Were it so, he would have no independent power over precious stones and the like inherited from their forefathers. Nor should it be argued, that the text (Book II, Chap. IV, v. 15, 3.) relates to other wealth besides precious stones and the like, since it coincides with that of YÁJNYAWALCYA (Book II, Chap. IV, v. 13.) There is no authority for restricting the sense; and the text (Book II, Chap. IV. v. 15, 3) bears a different import, being delivered under the title of Subtraction of Gift. Accordingly the author of the *Mitácshará*, otherwise expounding the equal dominion of father and son over property inherited from the grandfather, says, 'the gift is not void in this case.' He adds, 'even what the grandfather himself acquired, ought not to be given away by him, if his son or grandson be living:' and in the title of Subtraction of Gift he expressly says, that 'gifts are only invalid in the sixteen cases of void donations.' So, in expounding the text relative to land acquired by the grandfather (XCII), he notices this distinction: 'but, 'over property inherited from the grandfather, both have indiscriminate 'dominion; the sons have therefore power to forbid *alienation*.' Neither CHANDÉSWARA, nor any one of his followers, has affirmed, in express terms, that the gift of property, which had descended from ancestors, is invalid. But JÍMÚTAVÁHANA, who is followed by RAGHUNANDANA, considers the text (Book II, Chap. IV, v. 13) as forbidding gift *or alienation*.

In partition of property inherited from the grandfather, whose will is consulted? The answer is, partition is granted by the sole will of the father; for he is owner of that wealth. Consequently, the term "at his pleasure," in the text of VISHNU (XXV), signifies his pleasure relative to unequal partition, not his will expressed in these words "let there be partition." In like manner, by declaring equal dominion, that option *of unequal division* is excepted, not the choice of partition in general. Again; the text of MENU (XCI) supposes no desire to make an unequal division. In the text of VYÁSA (XCIV) the same is also supposed in the term "against his will." No distinction of property acquired by the father or grandfather being propounded in the several texts (XXII, XVII, XX, &c.), this circumstance is the foundation *of the present inference*. It is liable to this objection, that there is no ground for judging what kind of will is determinately meant in the texts of VISHNU and the rest. In the phrases, "he shall not, unless by his free will, make a partition;" "*he may give or* "*reserve*, at his pleasure, any part of his own acquired wealth;" and "against their father's will *sons cannot claim a partition*;" will is considered as relating to partition alone, as appears from the context: but here, again, there is no proof that partition can only be made by the will of the owner; for, in the case of payment of debts, delivery occurs by the will of the king, or by that of the *creditor*, who receives *payment*. Let it not be argued, that, were it so, partition or gift might be exacted at the option of a stranger. Property and its owner are not subject to the control of a stranger. Accordingly sale does not take place by the will of the purchaser. Then how can the father, and the patrimony which had descended from the grandfather, be subject to the control of the son? For this very purpose, ownership is figuratively attributed to the son. Consequently, the bank of the Ganges, though different from the river itself, being figuratively called by that name in the phrase 'a cowpen situated on the Ganges,' and in similar expressions, as the coolness, purity, and other properties of the Ganges are thence assumed; so, ownership being figuratively attributed to the son, though he be not the *true* owner, a right attendant on ownership is alone assumed: and that right consists, according to JÍMÚTAVÁHANA, in the power of claiming partition, and in that of resisting unequal division; for there is no ground for selecting one of these rights to the exclusion of the other. It does not consist in taking an equal share with the father; for that is not acknowledged by JÍMÚTAVÁHANA. This, properly explained, is the life of the opinion maintained by CHANDÉSWARA and the rest. However, there is this difference according to them, that the son has only dominion over the patrimony inherited from the grandfather.

What is the father's share of the patrimony inherited from the grandfather?

XCVI.

NÁREDA:—A father, making a partition, may reserve two shares for himself.

That is, a father, dividing the estate, may reserve two shares in his own right. This text, not being applicable to his own acquired wealth, for which it is already provided that he may keep the greater part of it and remain in his house (XXIII), must relate solely to wealth inherited from the grandfather.

XCVII.

VRĬHASPATI:—The father, who, during this life, divides *the land which his own father left him,* may himself take twice as much *as each of his sons.*

This and the text of SANC'HA and LIC'HITA (XLIV) must be considered as relating to that subject. In the text cited (XLIV) the apposition of the words "one" and "son" is in the form called *tat purusha*, "son of one;" for this form is preferable to that which is called *bahubrihi*, because the last term predominates.* By this expression, the son of two fathers is excluded from the text. Sons begotten on the appointed wife by a kinsman are sons of two fathers, because they are produced by the seed of one in the field of another (CCXXXIX). The same is also true of sons given and other adopted children. Since the apposition called *bahubrihi* may be also admitted when *the sense* it *conveys* can be justified by reasoning, the observation of CHANDÉSWARA and the rest, that 'the father of an only son shall have two shares, but the father of two or more sons shall have one share,' is accurate. If this be alleged, it must be inquired, what reasoning can justify the variation of the father's share with the difference in the number of sons. It should not be argued, that, since the parity of shares is ordained by a text of VRĬHASPATI (XCIII), the double share must of course be affirmed to be the sole right of a father, who has an only son. The seeming difficulty may be removed by explaining that text of VRĬHASPATI as relating to the father of a son begotten on an appointed wife by a kinsman. Again: the father is sole owner of wealth inherited from the grandfather, as well as of that which is acquired by himself; by his choice, partition is made; and he shall have two shares. But the adoptive father of a son, begotten on his wife by a kinsman, shall have one share, because *his paternity* is inferior, having adopted the offspring of a different natural father. This concerns immoveable property and the like. But, in the case of precious metals, pearls and the like, the father may reserve the greatest part of such wealth, and he may make an unequal division of it, giving more to some and less to others. Such is the opinion of JÍMÚTAVÁHANA and the rest.

Lest sons be distressed by a gift or other alienation in favour of an unworthy object, it is forbidden in the case of immoveable property, even though acquired by the father himself (Book II, Chap. IV, v. 14.) Consequently, the father is guilty of no offence in giving away or *otherwise* aliening such property with the consent of his sons. The text relative to enjoyment by indulgence (XCV), propounds a distinction between property real and personal, in respect of a valid title vested by mere enjoyment through indulgence. The gift of immoveable property and the like, to sons and the rest, is valid, as it is to strangers. The text of YÁJNYAWALCYA and VRĬHASPATI (XXXIII and XXXI) relate to wealth acquired by the father; for they coincide with the text of NÁREDA (XXXII), which must relate to the property of the father, since it expresses, "the father is lord of all." However, the unequal distribution made by a father, in consideration of filial piety or the like, has been already restricted to his own acquired property: that cannot take place in respect of wealth inherited from the grandfather.

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* A reason founded on a grammatical rule. T.

But others argue, from the text of MENU (XCI), which forbids participation, unless by his free will, in the hereditary estate, which has been recovered by the father, that in other cases partition may be claimed even against his will. Thus alone can the text of VYÁSA (XCIV) be accurately applied. By the word "equal," in the texts of YÁJNYAWALCYA and VRĬHASPATI (XCII and XCIII), the parity of rights is propounded: and that parity consists in the son's concurrent option of claiming partition. As, in consequence of the father's ownership, a distribution takes place by his choice, so likewise, in consequence of the son's *title*, under the authority of the law, partition also takes place by his choice. Such is the practice. Parity in regard to chattels equal in value or the like, so that the son shall receive the very same amount which constitutes the father's share, is not intended: for his double share is ordained by the texts of NÁREDA and the rest. The import of the words "one" and "son," in the text of SANC'HA (XLIV), must be understood in the mode proposed by JÍMÚTAVÁHANA and the rest. Or "one son," a mere instance comprehending the case of two or more sons, must be considered as an answer to this question: 'in the case of many sons, since they each take one share, and the father takes two shares, they have a less portion; 'in the case of one son, shall more be taken.' Or the mode of interpretation proposed in the *Párijáta*, may be accurate; 'let the chief son (for the dictionary of AMERA exhibits that sense of the word *éca* "one"), that is, the eldest son, take two shares, as also directed by the text of VRĬHASPATI' (XLV). Or the apposition may be in the form called *bahubríhi*, "he who has one son, that is, an excellent son, who earns wealth:" consequently the meaning, as deduced by implication, is, that the father shall take two shares of wealth acquired by the son, as ordained by CÁTYÁYANA. But as for what is said, that the texts of VRĬHASPATI and the rest, which allot two shares to a father, relate only to wealth acquired by him, and that, in the case of property inherited from ancestors, the decision is regulated by other texts of VRĬHASPATI and the rest (XCIII); to which, *say our opponents*, its inconsistency with the text of HÁRÍTA (XXIII) must not be objected, on the argument, that will or pleasure, denoting arbitrary choice, cannot relate to the double share: for, since there is no certainty what is signified by the term "greater part," which denotes any number from three to 2,187,000,* it may be considered as intending the double share. That is wrong; for parity with the father being stated in the text of VRĬHASPATI (XLV) as a cause of receiving indiscriminately two shares of property inherited from the grandfather, and of wealth acquired by the father himself, it is proper that the father should have two shares *of the estate however* acquired. This text does not relate to a father eminent by his virtue: for brethren endued with good qualities cannot be equal to a father endued with the same good qualities; the parity must be deduced from the virtue of the brethren, and the simple relation of the father. "May divide the estate," in the text GÓTAMA (XX), must be expounded 'may obtain shares.' If partition may take place even by the choice of the sons, may not a son make the partition while his father lives? No; for he is in no text described as the person who makes the distribution. Therefore a father, induced to make a partition even by his son's election of it, shall take his own double share. Accordingly, the latter phrase, "while the father lives, if he choose to divide it," is pertinent. Consequently, if it be much against the father's inclination, partition of

* *Mahácshauhiní*; an army consisting of 218,700 squads (*patti*); each containing one elephant, one car, three horses, and five foot soldiers: an improper example in this case. T.

wealth inherited from the grandfather shall not be made; for a son is declared not to be his own master while his parents live (Book II, Chap. IV, v. XV 5). But sons, oppressed by a step-mother or the like, may apply to the king, and obtain from their father a partition of the patrimony inherited from the grandfather; not a partition of wealth acquired by the father himself, unless by his favour. This is the whole meaning of the law.

If a gift to any son be valid, why is not the allotment of a greater portion to any one son *also* valid? Since there is nothing in the law to prevent the investiture of property by an act of the will in favour of another, declared in this form, "let this chattel, quitting me, become his," the gift is valid; but an act of the will in regard to partition, wherein unequal distribution is designed, and which may be expressed in these words, "let this man have this as his share in right of filiation or the like," being opposed by the law (XXVII and XXVIII), does not transfer property. Let it not be objected, that the additional words "in right of filiation or the like" are nugatory; and therefore the act of the will in regard to gift and to partition may be the same. Were it so, as a gift in favour of a stranger is valid, so would be partition; and the word "sons," and similar terms, in the texts of YÁJNYAWALCYA and the rest (XXVI, &c.), would be unmeaning. However, the gift of a man instigated by lust, wrath, or the like, is not valid; as has been mentioned in the chapter on Subtraction of Gift.

The period when partition of wealth inherited from ancestors may be made, has been also propounded by GÓTAMA (XX). "If their mother be too aged to bear more sons," relates to the patrimony which had descended from the grandfather; for, unless the mother be too aged to bear more sons, partition could not be made among existing sons, since it is reasonable to reserve for those who may be hereafter born, their right to the patrimony inherited from the grandfather: and this is a mere instance comprehending the case of a father capable of connubial intercourse, but refraining from it: else the son of another wife could have no share. This is evident in the text of NÁREDA.

XCVIII.

NÁREDA:—When the mother is too aged to bear more sons, and all the sisters have been given away *in marriage*, and the father either refrains from pleasures, or withdraws from worldly concerns, *then shall partition be made.**

XCIX.

VRĬHASPATI:—After the death of both their parents, partition among brethren is ordained; and, even while their parents are living, it is proper, if the mother be too aged to bear more sons.

This text of VRĬHASPATI also relates to partition of property left by the grandfather. If shares have been distributed, although the mother were not too aged to bear more sons, what should follow? has a son been born after partition, or not? In the first case, the remaining wealth, omitting what has been consumed, must be brought together, and a second distribution must be made: for sons, though born after partition, claim *shares of* the

* The last hemistich, read variously, forms the first part of the verse numbered VI. T.

patrimony which had descended from the grandfather. But, in the second case, that very partition is valid. Let it not be objected, that, since the mother's arrival at a certain period of life can alone entitle the parceners to divide *the estate*, that partition, being made by persons not authorized *to do so*, is void, like one which is made by a stranger. Since the phrase, "when the mother is too aged to bear more sons," may be explained as providing for the participation of a future son, there is no proof by which it can be established to propound a distinct authority for partition. However, property, ill distributed, must be again divided.

C.

VRĬHASPATI :*—When a partition has been made between a father and his sons by the same wife or by different wives, the sons who may be born after the partition shall inherit the estate of the father:

2. A son born before it shall have no claim on the paternal estate *unless he reunite himself;* nor a son born after it, on that of his brother: the duty of paying debts, and the right of giving, pledging, or selling, follow the property inherited; *so that the son born after partition must pay the debts of the father contracted before it.*

What is the application of this text, cited by RAGHUNANDANA and others, which signifies, that the son born before partition shall have no claim on the share reserved by the father when he divided the estate among his sons, nor on the share allotted to his brother by the same partition, nor any power to receive or discharge debts *of his former coheirs?* and what is the application of the following text cited by JÍMÚTAVÁHANA and the rest? for a second partition is directed when a son is born after the first.

CI.

MENU:—A son born after a division *in the lifetime of his father*, shall alone inherit the patrimony, or shall have a share of it with the divided brethren, if they return and unite themselves with him.†

No; for those texts may relate solely to property acquired by the father himself. The reverse should not be affirmed, that the former text (XCIX) relates to property acquired by the father, and this (CI) to wealth left by the grandfather. In the case of wealth inherited from the grandfather, should the prescribed double sharereceived by the father be consumed by use, sons born after partition would be destitute of property; but, in the case of his own acquired wealth, since the father may reserve the greatest part of it, they will also receive allotments out of the remainder of the fortune reserved: it is therefore proper, not to affirm the reverse *of the proposed exposition.* JÍMÚTAVÁHANA observes, if partition of wealth inherited from ancestors be made before the mother be too aged to bear more sons, that partition is not proper; since sons, born afterwards, might be deprived of subsistence (Book II, Chap. IV, v. 12)‡. He considers the hereditary means of support as intended by the word "subsistence" (*vrĭtti*), which

* Cited anonymously, but attributed to VRĬHASPAṬI in a subsequent chapter. T.

† Quoted partially and anonymously in this place. It is cited at large in Chapters VII and VIII, where the last hemistich is otherwise expounded. T.

‡ Cited in this place as a text of MENU, but formerly quoted from another author. T.

occurs in the text quoted. But others, finding the word "mother" in every text which requires the cessation of her periodical discharges, argue, that the age of the mother is a requisite condition of a distribution proceeding from the son's choice; and this only regards wealth inherited from the grandfather. Then, if partition of property inherited from the grandfather be undertaken by the father's choice, the age of his wife would not be a requisite condition? That may be true. Let it not be objected, that this would contradict the text quoted (Book II, Chap. IV, v. 12.) The word "subsistence" (*vritti*) does not signify wealth left by the grandfather. That term is employed by excellent persons of the present day, as *also* signifying land, a corrody or the like, even though acquired by a man himself; and it is so used by VIJNYÁNÉSWARA. This text, therefore, has the same import with one which has been already quoted (Book II, Chap. IV, v. 14.): and if sons apply to the king for partition, he must inquire whether the mother be past child-bearing; for, if they obtain partition on a false pretence, the rule of VISHNU (CII) must be observed, that the brethren only shall give a share *to the son born after partition,* not the father, since he has committed no offence. The text which will be quoted from YÁJNYAWALCYA bears the same sense. But if partition be made by the father's election, "a son born before it shall have no claim on the paternal estate, nor a son born after it on that of his brother," and so forth, as will be mentioned.

CII.

VISHNU:—Sons, with whom the father has made a partition, shall give a share to another son who is born after it.

Hence, while the father's right subsists, his choice alone determines the time for *making a partition of* his own acquired wealth: but, in the case of property inherited from ancestors, it is also requisite that the mother be past child-bearing; and, *with this reserve,* the father, or (according to another opinion) he or his son, may choose *the time: partition of* both sorts of property *may be made,* when the father's right terminates *by his demise natural or civil.* These are three periods *for making a partition,* according to JÍMÚTAVÁHANA and the rest. But VIJNYÁNÉSWARA observes: 'hence, while 'the mother is capable of bearing more sons, and the father is still attached '*to worldly matters,* partition of wealth which was inherited from the grand'father may take place by the choice of his sons, even against his will.' He considers the phrase, "when the mother is too aged to bear more sons," as relating to wealth acquired by the father himself.

When the third measure of the text of NÁREDA (XCVIII) is read *vinashté vápy ásaraṅé* (VI), the preceding phrase which literally signifies "when the mother's periodical uncleanness has ceased," must be considered as denoting the impossibility of her bearing more sons. The word *ásaraṅé* is expounded, "having quitted the order of a householder." This cannot be questioned as a vain repetition of the term "having resigned" or withdrawn from worldly concerns; for, when a man, abiding in his own house, but devoting himself wholly to the worship of the Deity, to whom he has dedicated his service, withdraws from worldly concerns, he has resigned; but, when he enters into the fourth order, he becomes an anchoret. Either way, abdication is the sole ground on which his property is annulled. Consequently, devesture of property happens three ways; by degradation, by abdication or renunciation, and by natural death. But to this may be objected the case of a leper, *whose property is devested in none of those mode*

A question may be here proposed for disquisition: if a man, surviving his resignation of worldly concerns, and urged by his fate, cohabit with his wife and beget a son after his property has been divided among his children, what would be the consequence? It is answered, the father's property being devested by abdication, which is a *virtual* gift, and the property being vested in his sons without any effort on their part, how can a child born afterwards have any claim thereon, whether it be or be not divided, since it does not belong to his father? But, in the case of partition made while the mother was capable of bearing more children, a portion must be allotted *to a son born after it*, under the authority of the law; for otherwise the phrase, "if the mother be too aged to bear more children," would be nugatory. "And when all the sisters are given away *in marriage*," is added to show the necessity of bestowing them *in marriage* after the death of the father; it does not denote, says JÍMÚTAVÁHANA, that partition cannot take place unless the sisters have been given away *in marriage*.

CIII.

CÁTYÁYANA:—Out of property acquired by a son, the father, *if he be living*, shall, *on a division of the family*, receive two shares *in some cases*, or half *in others*: and the mother, if the father be dead, shall take an equal share with her son.

What is the import of the first hemistich in this text propounded by CÁTYÁYANA? Does it relate to property acquired by the son, with or without the use of the patrimony, or to property of another sort? On this point JÍMÚTAVÁHANA observes, 'of wealth acquired by a son through the use 'of the patrimony, the father shall have half; the son, who acquired it, two 'shares; and the rest, one share each: but, out of property acquired by a son 'without the use of the patrimony, the father shall have two shares; the 'son, who acquired it, shall also have two shares; and the rest are not 'entitled to any participation.'—*According to this gloss*, the sense is, because the property was acquired by the son. It is consequently implied, that the father receives either half, or two shares, of wealth acquired by his son. We must not, with the northern RÁMACRĬSHNA, fall into the error of *literally* explaining the terms "out of property acquired by a son," considering "acquisition" *(arjana)* as an epithet of the other part of the compound *(vitta)* "*wealth or* property," because the rule expresses, that 'neuter derivatives of words denoting action are similar to nouns signifying substance.' This has not the natural properties of substance.—Whatever word occurs as the last term in the apposition named *shasht'i tat purusha*, is considered as an accident or epithet of the preceding term, whereas, in this instance, the subject is placed last *(arjana vitta)*. But in the instance of the term "front of the body" *(púrva cáya)*, and similar forms of expression, the exception is founded on the special powers of the word *púrva* and the rest. Nouns of action are not of course considered as epithets, because they are similar to nouns signifying substance; nor is their similiarity to such nouns admitted for that purpose. Must not the similarity of verbal nouns to words signifying substance, be acknowledged, because they are not treated like those words of action which bear the sense of conjugated verbs? This objection may be answered by asking, Are you then ashamed to say that neuter derivatives of terms signifying action are similar to those words of action which take the inflections of nouns? Consequently, the parity of neuter derivatives with nouns signifying substance, only authorizes their use in the dual and plural

numbers. As for the notion, that action, being an assemblage of single acts, is of course numerous, and may therefore be expressed in the plural number; that is futile. Were it so, words of action bearing the sense of the verbal inflection, (*or of conjugated verbs,*) would also express multitude. Grammarians do not admit the unity of acts naturally different *and unconnected*, such as gratifying, throwing, respecting, and so forth. Nor is it usual to say "boilings," *in speaking* of that action in one house, where all the operations of the work are collectively performed.

This is proper; for it is intended to show that a father shall take only two shares out of property acquired by his son through the use of wealth common to all the brethren, and without employing the several property of the father. RAGHUNANDANA.

But others hold, that the father shall receive, *for his share*, half *as much as he who acquired it*, if the patrimony were not employed; for his son acquired the property, and the father has *only* a claim in right of paternity: but, if the patrimony were employed, he shall receive, *for his share*, out of the whole wealth, twice as much as he who acquired it; because he has claims both as owner of the capital, and as father; the acquirer or acquirers, whether one, two, or more, shall only receive a third part. Since sons have also an interest in their father's property, half the sum is the only proper allotment; and that being the case, *the father ought not to receive a double share:** if this be alleged, the answer is in the negative; for, although their interest in his property be admitted, they have not immediate power to dispose of it at pleasure. In such a case, ought the rest to receive a share or not? They may have a share, since the claim of sons on their father's estate, during his life, is admitted for this very purpose.

JÍMÚTAVÁHANA also proposes another mode of interpretation: 'a father, 'who is endued with good qualities, such as science, valour, or the like, 'shall take half the wealth so acquired; but, if his claim be solely grounded 'on paternity, he shall have two shares.' Here, nothing is expressly said in regard to the patrimony being used or not: but as a son partakes of wealth acquired by his father, so a father is likewise entitled to partake of wealth acquired solely by his son. This is the only accurate exposition: but is it not at variance with the opinion which maintains that a son has no property *exclusively his own?* Although the father be sole owner of the whole, both at the time of acquisition, and afterward; still, when partition is made, a portion shall be allotted to the son, under the authority of the law, in right of acquisition.

But some expound the text, 'the father shall have a double share, because he acquired both the son and the wealth.' Consequently the sense is, 'if there be a son, the father, who acquires property, shall receive two shares:' and when partition of his own acquired wealth is made by the father, he shall take half, or two shares, at his option. That is not consistent with the opinion of JÍMÚTAVÁHANA; for option, considered as arbitrary choice, cannot be limited to *the alternative of* two shares or *of* half. As for the son, acquisition *affirmed concerning him* is partial, merely *asserted* because *a gift of a son* has occurred when a man gave away his whole estate. It is therefore reasonable, that, as the son partakes of wealth acquired by his father, so should the father partake of wealth acquired by his son. Consequently, since this text may be adduced to satisfy the question, what share

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* An omission is here supplied from conjecture. T.

should in that case be received by a father? there is no *good* argument to support such a bad construction *as that which had been proposed.*

This, however, is liable to objections. If a father have not property in his son, then only can the acquisition be partial *or figurative.* Now such property in a son must be acknowledged; else, the rule of law, "both parents have power to give, to sell, or to desert a son" (Book II, Chap. IV, v. 8), would be unmeaning; for gift or other alienation without property is impossible. The expression of the great teacher of logic,* "GOD, to whom generated worlds truly belong," could not be pertinent, unless a father had property in his son. The *Márcandéya purána* and other works record the sale of his wife and son by the universal monarch HERIŚCHANDRA, to make good the sacrificial fee of the sage VIŚWAMITRA, on the performance of the royal sacrifice called *rájasúya*: and the sale of the sage ŚUNAHŚÉP'HA by his father, is recorded in *Puránas* and other works. Yet, in fact, the same ownership of a wife and son, as of chattels, is not admitted; *for*, were it so, sons would be owners of each other after their father's demise. Let it not be argued, that such ownership does subsist; but, as is deduced from reasoning, vested in each over himself; and hence a son whose father is dead, may legally sell himself. A son would be the owner of his mother and sisters. *Now* sons have not dominion over their mothers: nor shall brothers alone give away their unmarried sisters; for that would be reprehensible, while the paternal grandfather is living.

"Half" (CIII) must here signify equable part, by the rule which expresses that equal parts are intended when the proportion is not specified. On the question, whether that half be one share as the moiety of two, or half of the whole, JÍMÚTAVÁHANA says, 'half of the whole sum.' For, if half of two shares were implied, why not say, "or he shall receive one share *in other cases?*" Since the term "two shares" must have some connexion, therefore, to satisfy the question, two shares of what? 'two shares of property acquired by a son,' must be affirmed. Consequently, that being the subject of partition, it is obviously reasonable to infer, 'half of that property likewise, *in other cases.*'

If the acquisition be made on his brother's stock, lawyers affirm it to be the opinion of RAGHUNANDANA, that he, who acquired the wealth, shall in this case also have a double share; for RAGHUNANDANA says, 'when 'the brother's stock was employed, the father shall have two shares, the 'acquirer two shares, and the rest one each:' and that *seems* accurate. Or, if it be RAGHUNANDANA's meaning, that the common stock was employed by him who made the acquisition, since it would otherwise be inconsistent with the observation, 'if that horse be afterwards allotted to another, equal 'partition would be proper; for the acquisition is made by the exertions of 'the one, and by the labour of a horse belonging to the other;' what distribution shall be made when the property is acquired by any one son through his own labour *on his brother's stock?* The answer is, the father shall in that case have two shares, and both his sons one share each. But if it were acquired on his brother's stock and on his own, by his own labour, the acquirer shall have two shares, the father two shares, and he, who supplied funds, shall have one: and in both cases the rest of the brethren shall be excluded from participation. Such is the method consistent with reasoning, to which the law assents.

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* UDAYANÁCHÁRYA.

If a man have sons, and grandsons both in the male and female line, and sons of a grand-daughter, and some property be acquired by his son's son, with supplies out of his estate, what is the rule of adjustment in that case? Some argue from the letter of the phrase, "property acquired by a son" (CIII), that what is acquired by a grandson is similar to the acquisition of a stranger. Consequently, since the funds and the person have contributed equally *to the acquisition*, half belongs to the paternal grandfather, and half to the grandson; but his uncle shall have no share, for no text ordains their participation. That half allotted to the grandfather is considered as property acquired by him, through the means of the wealth adventured: and hence, wealth acquired through the employment of hereditary property shall also be divided at the pleasure of the father. Is it not an unjust disparity, that a grandson, whose own father is dead, shall have a share of property, which has been acquired by the son of the common ancestor, through supplies from his father's estate; but that the uncle should have no share of wealth so acquired by a grandson, whose own father is dead? No; for there is no proof that the grandson, whose own father is deceased, shall in this case have any share: the word "brothers" occurs in the text of VYÁSA (CX), and it does not follow that a brother's son and his uncle shall share together.

The opinion of these lawyers is not approved by RAGHUNANDANA; for in expounding the text of VYÁSA, he says, "brothers" are merely an instance from which uncles and the rest should be also understood. There is equal reason, why sons, grandsons, and great grandsons in the male line shall share in the reversion of property belonging to the common ancestor: for the son of a son also belongs to his ancestor, as the slave of a slave belongs to the master; and so does the great-grandson in the male line: this also is reasonable. May not the same be affirmed concerning the son of a daughter, and the rest? They are not similar, for their claim is weaker, since they confer no benefit *on the ancestor* while a son is living. If it be alleged, since a great grandson also, whose father is living, is disqualified *for the performance of obsequies*, he has not an equal claim; this argument is denied—for, when his father dies, he may have a similar claim *with sons*. This is affirmed, considering only natural fitness. If, therefore, property be acquired by the son of a son through supplies from his grandfather's estate, the grandfather shall have half, the uncles and the rest a share each, and the grandson, who acquired the property, two shares: but if no supplies were received from the grandfather's estate, the uncles and the rest shall not participate. Thus may the law be concisely stated.

Must not the text, which ordains two shares (CIII), be considered as relating to wealth acquired by a son? and there is consequently no authority for the receipt of two shares by a grandfather. No; for it would be unequal that the son of a son should partake of property acquired by the grandfather himself, but the paternal grandfather should not participate in property acquired by his grandson. The word "son" is a mere instance of a general sense; else the same term could not be so accepted in the text of YÁJNYAWALCYA (XXVI). If it be a maxim, that the right of succession is reciprocal, then, should a grandson, who is competent to inherit the property of his paternal grandfather, die, would not the paternal grandfather be his successor, though his father be living? and hence the word "son," in the text of YÁJNYAWALCYA (XXVI), may be taken as illustrating a general sense, from the coincidence of other texts (LXXIX); but in this instance there is no authority to support such an acceptation. Then a father would be also

incapable of succeeding to property which his son acquired without employing the patrimony; for the text, ordaining a double share in certain cases (CIII), may be explained in some other manner as relating to a father deficient in virtue, *not as relating to property acquired without using the patrimony.* Is not authority wanting to restrict the text, which notices property acquired by a son? for the receipt of two shares, when partition is made, cannot be inapplicable to every case of wealth acquired by a son before partition. On this some remark, that 'the grandson and great grandson in the male line having an equal title to inherit with the son, it is reasonable that they should be equally bound to give shares of what they themselves acquire.' But in the case of an acquisition made by the son of a daughter, should the property of the maternal grandfather have been employed, he shall take a share proportionate to the capital used, and the maternal uncles and the rest *shall* have no shares; but if the acquisition were made without such use of property, the maternal grandfather shall have no share. This must be considered as the rule in the case of an acquisition made by a son, or by the son of a daughter.

It has been said, this contradicts the maxim that the right of succession is reciprocal. It cannot be argued, that the rule is not infringed, if the condition be added, in *each other's* lifetime: for, according to your opinion, a paternal grandfather takes a *share of* property belonging to his grandson, whose father is living; but this grandson does not *immediately* receive *a share of the* property belonging to his paternal grandfather.

The paternal gandfather does not partake of the wealth acquired by his grandson, whose own father is living, but that father alone *does participate;* for he has the chief dominion over the person who makes the acquisition; and, since the acquisition was effected by *the use of* his funds, the paternal grandfather may take one share in proportion to the wealth *employed;* and, in this case, it is treated like property acquired by himself: but afterwards, when the father makes a partition during his lifetime, he shall take two shares, or half (for there is a difference of opinion on that point), because it was acquired on funds belonging to his father. If this be denied, because, were it so, a grandfather, distributing property which has been acquired by a grandson with supplies from his (the grandfather's) own wealth, must give to sons more than is allotted as a due share to the grandson who made the acquisition; but no share of such property would be given to the paternal uncles and the rest, when partition of property was made after the death of the paternal grandfather: which would be unequal, since the grandson receives a share of the wealth acquired by his uncles. It is answered, the maxim may be thus stated; he who would take *a share of* another's property, if partition were made in his lifetime, shall give a share of his own property to that person if he be living.

If it be argued, *since* a grandfather has dominion over the son of his son, as a master has over the slave of his slave, therefore he shall receive two shares or the like; *the answer is,* the shares are not in this case received in right of such dominion or ownership. Were it so, the father would take the whole wealth acquired by his son. But they are received under the authority of the text and of the maxim *above cited.* Hence *a share of* property acquired by a grandson, or remoter descendant, whose own father is living, is not received by a grandfather. If it be alleged that the law on this point is founded upon reason; for a father, although he have dominion over the whole property acquired by his son, gives it to his son; he must

give that property, so acquired, to him, to whom he gives his own wealth, *namely to his son*: what is there contradictory in this? but, since labour is employed in the acquisition, a greater share is assigned by authors, as it were for the wages of that labour. On this strained refinement some lawyers ground a remark, that the ancestor shall give two shares to the acquirer *who is related to him* through the medium of his son, one share to each of the rest, and reserve for himself two shares or the like according to circumstances. But others argue from the opinion, in which the dominion of the surviving ancestor over sons, grandsons and great grandsons is maintained, that the paternal grandfather, having dominion over his grandson through the medium of his son, shall, when he divides the heritage, take two shares or the like in proportion to the use made of his property, and so forth: the father shall not take that allotment, for he does not make the partition. The whole of the remainder shall belong to the acquirer; but, his grandfather's property having been employed, he must give two shares to the grandfather, whose claim is derived through his own son. Consequently, if the father of him who made the acquisition have four, and the paternal grandfather have three sons, five shares must be allotted to the father of him who made the acquisition, and four to each of the rest; afterwards, when the father of him who made the acquisition divides the property in his lifetime, he shall subdivide four of the shares, taking two parts as his own due, and giving one to each *of his sons*: but he must divide the fifth share equally with him who made the acquisition; for it was not acquired by himself, nor by his father or other ancestor; and the rule directs equality where no other proportion is specified: if the acquirer die in the meantime, leaving no son or grandson, then, even though he leave a wife or distant heir, it shall be divided by the father among his sons, like property acquired by himself.*

In partition made by a father, how shall property inherited by him from his maternal grandfather, who left no daughter or nearer heir, be distributed? shall he take two shares or the like, as if it were property inherited from the paternal grandfather; or may he reserve a considerable part of it, as if it had been acquired by himself? To this question some reply, that "his own acquired wealth," in the text of VISHNU (XXV), signifies that which was gained by his own act; but, what is received from the maternal grandfather, being gained without any exertion on the part of the father, is not acquired by his act; he shall therefore receive two shares or the like, as suggested by the general rule. It should not be objected, that the text *only* ascribing to the father and son equal dominion over property left by a paternal grandfather, they have not such claims in this case. Their equal dominion is a necessary consequence of considering the term, "property left by the paternal grandfather," as a mere instance of a general sense: else it would not be a rule, that the father, being son of one born blind, shall take two shares or other *greater* portion of property inherited from the paternal great grandfather. Nor should it be objected, that the acquisition made through his own act can only signify a gain proceeding from business appertaining to him; else what is accepted as a present, or casually found in the middle of his own house, would not be his own acquired property; and business here signifies his livelihood and so forth, as the case may be: consequently, in this case also, he may justly reserve the greatest part for himself; but he shall only receive two shares or other *similar* portion of property left

* It is not clear, on what arguments this distribution is proposed. T.

by the paternal grandfather, since a special law prevents *another* distribution. The term "property left by the paternal grandfather," must be explained property inherited in right of affinity: whether it be received from the paternal great grandfather, or from the maternal grandfather, and so forth, the father and son have equal dominion over it. Nor should it be argued, that property regularly descending from ancestors, is alone intended by the term "estate left by the paternal grandfather;" and that any other property, whether left by a maternal grandfather, or received in a present, or the like, is regulated by the law which allows the reserve of the greatest part and so forth. There is no argument to prove that an estate devolving from the maternal grandfather and the rest is not considered as regularly descending from ancestors: and legislators have not distinguished property devolving eventually *on collaterals or on descendants in the female line.*

That reply is not satisfactory; for, when the heritage of one who leaves no kinsman devolves on a fellow-student, or on a learned priest, the father and son would have equal dominion. In the case where the son of a daughter's son does not succeed to property eventually devolving *on distant heirs, by failure of the direct descent in the male line*, surely that son has no dominion if his father be dead; but, if his father be living, he is not even noticed. The very same exposition is proper in respect of the heritage devolving from the father of the paternal great grandfather, on the grandson of his grandson; for that has not regularly descended from ancestors.* But the heritage of the paternal great grandfather, successively devolving on his son and the rest until it reach the great grandson, has regularly descended; in that case the rule of equal dominion vested in father and son must be argued: however, when a great grandson, whose father and grandfather are both dead, succeeds to the estate of his paternal great grandfather, he and his son have equal dominion. There is no objection to explain "property left by the paternal grandfather," an estate inherited in right of birth whereby the ancestor attains a region of bliss; for texts show, that a man reaches heaven by the birth of a son, of a son's son, and of the son of that grandson (CIV and XI.)

CIV.

YÁJNYAWALCYA:—Through a son, a son's son, and the son of a grandson, the father or ancestor obtains *bliss in other* worlds, immortality, and heaven.†

Some thus explain the text quoted: world (*lóca*), immortality (*angntya*), heaven (*diva*), are different regions of joy so named; the region of bliss called *diva*, and the solar abode (XI), appear to be the same. But others say, world (*lóca*) intends a region of joy; by a son, a man attains

* Regular descent extends only to the great grandson; on failure of him, the estate devolves on the wife, &c., but, after some deviations, the table of successions reverts to the lineal kindred. T.

† That is, by their oblations of cakes: therefore, they succeed to the deceased by a kind of purchase; and if the ancestor leave a son, and the son of another son, and the son's son of a third son, they take equal shares of his estate, because they confer the benefit equally. This notion is the key to the whole Indian Law of Inheritance; and, for this reason, the law of obsequies, promulgated by MENU, must be carefully studied. Note by Sir WILLIAM JONES.

that region; by a son's son, he enjoys an endless abode there; and by the son of that grandson, he reaches the solar abode, a region of bliss superior to the preceding: by heaven (*diva*) is signified the solar abode; for the general term may be employed in a special sense: there is consequently no contradiction in these texts. This interpretation is unnoticed by other authors.

CV.

The *Mahábhárata*:—This young girl, though sole, will be more *estimable* than a hundred, for my lord will be relieved from regret, attaining the *blissful* world through a daughter's son.

Under the admission of the text, since a daughter's son inherits in right of birth, whereby his ancestor attains heaven, he and his son may have equal dominion in this case, as if the property had been inherited from the paternal grandfather. If this be alleged, the answer is, the term must be explained, according to the opinion of VIJNYÁNÉSWARA, property inherited in right of birth unattended by any other *requisite* cause. By birth alone property vests in sons and the rest; but it vests in a daughter's son and others by birth, upon failure of sons and the rest. According to other opinions also, it signifies property inherited in right of birth, independent of the general failure of sons and other *near* heirs. Whence is all this deduced? From plain reasoning: since the term "paternal grandfather" must comprehend the paternal great grandfather, and must exclude the maternal grandfather, this interpretation alone is admissible.

But others hold, that what is gained through no affinity or relation, is acquired by the party himself; what is gained through some affinity or relation, is *comprehended under the term* 'left by the grandfather:' in the case of a heritage devolving on a learned priest or a fellow student, there is no objection to admit the equal dominion of father and son. Or what is gained in right of birth, may alone be denoted by "property left by the grandfather:" else, should the father, through avarice or other motive, abandon the paternal estate, and occupy the abode of his maternal grandfather after the decease of that ancestor, the son, born after partition made by that father, when the estate is reduced by consumption, might be destitute of a maintenance. If it be asked, 'is not this remark equally applicable whether he have no property inherited from the paternal, or from the maternal, ancestor, but only property acquired by himself;' and if the objection, 'that the father has wilfully deprived his son of a maintenance, (since he abandoned his patrimony coveting the wealth of his maternal grandfather, and since that patrimony, has not been received by his son; and therefore the cases are dissimilar;) be repelled, because the grandson or other descendant might, if he pleased, take his share of the patrimony, under the authority of the subjoined text, "Of wealth inherited from ancestors, even "though not taken by the father, partition again extends to the fourth in "descent; this is a settled rule:" and if it be inferred, 'that the father 'is guilty of the sin arising from the defalcation of *his son's* maintenance, if 'he neglect, give away, or otherwise *abandon*, the estate of his own father;' they answer, the absolute defect of property inherited from a father or paternal ancestor, and the devesture, by partition, of property which has been inherited from a maternal ancestor, are not similar. Their opinion is liable to objection.

An observation should be here made. The participation of a son's son, whose father is dead, and of the son's grandson, whose father and grandfather are both deceased, is ordained by the texts of CÁTYÁYANA (LXXIX), when partition is made by a father. Hence partition by a grandfather, or great grandfather, is surely valid: and if the common ancestor have no surviving son, but have a son's son, or a son of a grandson, partition may be made for his sake by the grandfather or great grandfather. It should not be objected, that, as a share is ordained for the wife, when partition is made for the sake of the son, so it is directed that shares shall be given to grandsons and the rest: *and consequently* partition shall not be made for their sake, because sons alone are mentioned in the text of YÁJNYAWALCYA (XXVI); and because the texts of CÁTYÁYANA may be solely applicable to such cases. Since a son, a son's son, and the son of that grandson, equally benefit the ancestor, contributing by their birth to his attainment of heaven, there is no argument on which a disparity can be established: but no share is allotted, by any text, to the wife independent of the son; and it is therefore fit to establish such an inference. A partition made by a maternal ancestor in favour of a daughter's son and the rest is not legal; but if any one make such a partition, in consequence of observing the practice of distributions made by fathers, it is valid, provided all parties consent; but not otherwise. This brief statement of the law may suffice.

CVI.

YÁJNYAWALCYA, after premising partition by a father:—One who is able *to earn a livelihood*, and claims not *a share of the joint property*, may be disunited from the family, on giving him some trifle as a consideration to prevent future strife; or the portion of an elder son may be allotted to the first born: or all *the sons* may have equal shares.

The text is introduced in the *Retnácara* with this remark; 'the legislator also propounds an exception to these two cases.' Consequently, to a malevolent and indolent son, who is able, *but will not work*, a small portion, merely for the means of subsistence, shall be allotted; not a better portion *than the rest*, nor *even* an equal share, if his indolence be not authorized by the father: and this takes effect, even against the will of the parent; for it is ordained by the law. However, this maxim concerns property acquired by the sons, not that which has been acquired by the father or ancestor. The author of the *Pracáśa* expounds the text, 'giving 'some trifle of small value, to prevent future strife with his sons, disunion of 'religious ceremonies, or partition, may be made.' BHAVADÉVA, the *Mitácshará*, and the rest, furnish the same exposition. The term (*aníhamána*), *which is explained malevolent in the preceding comment, more properly* signifies not wanting the wealth of his father. How shall he find means of subsistence without partaking of the patrimony? therefore does the legislator add, "who is able;" that is, able to earn a livelihood without *receiving a share of* the patrimony. The context suggests this sense. The sons of this co-heir might dispute the equity of the partition, if their father had been disunited from the family, with a trifle given to him; but, according to this last opinion, in which the verb *ih* is taken in its sense of 'strive,' if future contests be prevented by his voluntary acceptance of an inferior share, it is also prevented by his voluntary renunciation of his own right. This is

liable to objection; for a fine to the king is denounced (CCCLXXVIII) against him who voluntarily accepts an inferior share *and afterwards disputes the partition*, not against him who voluntarily renounces his share *and afterwards revives his claim.* The last opinion must be therefore admitted, taking the text in its literal sense (*that some trifle must be given by way of share to prevent future strife*): and in this case of partition by a father, should he give no share to any one son labouring under no legal disqualification, such as expulsion from his class or the like, it must be remembered that such partition is expressly declared invalid. This text must be also adduced in the case of partition made after the death of the father, for no other text has been delivered by YÁJNYAWALCYA; and the rule is propounded generally by MENU.

CVII.

MENU:—If any one of the brethren has a competence from his own occupation, and wants not the property *of his father*, he may debar himself from his own share, some trifle being given him as a consideration, *to prevent future strife.*

The text is thus expounded in the *Pracáśa*: should any one of undivided brothers, through laziness or knavery, make no exertion for gain, that is, strive not to improve the former stock, nor to acquire other wealth by agriculture or the like, he may be debarred from his share, or, *in other words*, excluded from participation in the wealth acquired by the rest of the brethren. But there is nothing to prevent his receiving a share of the original stock. Hence that shall be received by him. However, the legislator directs, that a trifle shall be given him for his maintenance: and that trifle shall be allotted out of the property acquired by his brothers. This allotment is founded on the near connexion between the wealth *formerly possessed and that now acquired.* But his not receiving a share proportionate to the whole estate is the consequence of his knavery. From the expression "able," *or competent*, it follows, that one who is unable *to assist the common exertion for gain*, shall receive a share proportionate to the whole estate. HELÁYUDHA expounds the text as follows; to him who takes not his own share, a trifle must be given to prevent future strife with his sons, and partition may *then* be made. The text of MENU is cited in the *Retnácara* with this remark, 'the legislator declares the same.' JÍMÚTAVÁHANA, RAGHUNANDANA and others concur in the same exposition; but they explain 'giving him some trifle for his maintenance,' giving him a handful of rice or the like. The meaning is, he who is able to subsist by his own occupation, and accepts not a share of the joint estate, but *on the contrary* renounces *his own right*, must be supplied, *when necessary*, by his brothers, out of the shares they have severally received. The text of NÁREDA bears the same import, says HELÁYUDHA quoted by MISRA.

CVIII.

NÁREDA:—He who, being employed in the affairs of the family, performs their business, *receiving no share in the original partition*, shall be supplied by his brethren with food, raiment, and beasts of burden, *to complete for him his full share.*

The commentator's meaning is this: if any one of the brethren, generously declining to receive his share when partition is made, afterwards claim it, the property shall not be thrown together for the purpose of making a new partition on his account, but his share shall be made up by the rest of the brethren contributing severally and proportionally a part of theirs: in this manner shall his share be allotted to him. Consequently, from the ambiguity of the phrase, the import of these texts should be applied to all *these different* cases. The author of the *Pracáśa*, and MISRA, think the right of filiation and the like so indefeasible that, if a share be not received when partition is made, it may be of course obtained by the party himself, or his son, choosing to claim it at a subsequent time. The opinion, delivered in the *Retnácara*, shall be hereafter elucidated.

One being employed for the benefit of his family and relations, performs their business, or work adapted to provide their subsistence, and takes not his share of the patrimony; if he subsequently claim his allotment, he shall be supplied with food, apparel, beasts of burden (mentioned merely by way of illustration), and other things, such as grain, silver, gold, ornaments, and the like; and a full share shall be thus allotted to him. The text is so explained by MISRA and the rest. But the author of the *Retnácara* considers the expression, "employed in the affairs of the family," as intending a brother eminent by his good qualities. For instance; being employed in providing for the maintenance of his brethren, their families and his own, he performs that business; he conducts agriculture, or transacts purchase and sale or the like; he shall therefore be advanced by the rest of the brethren who perform not such work: consequently, on account of his virtue in exerting himself for the maintenance of the family, a superior allotment of food, clothes, beasts of burden and the like shall be given to him. JÍMÚTAVÁHANA and others concur in this exposition. As a better allotment of food, clothes and the like shall be given to him who labours for the support of the united family, so a worse allotment shall be given to that brother who does not make any exertion to support it, though able to do so: and when partition is made, a greater or better share must be given to him by whose exertions the members of the family live; and he who is able, but does not labour for their support, shall be disunited from the family, giving him a maintenance only, as directed by MENU (CVII). The same rule is applicable to the case of partition made by a father. Such is the opinion delivered in the *Retnácara*: and this we hold reasonable; for VYÁSA praises them who make exertions *for the behoof of others.*

CIX.

VYÁSA:—Useful is the life of him, by whom, while he survives, priests and kinsmen subsist. Who is there that does not live for his own benefit?

Partition with sons begotten on a wife by an appointed kinsman, and other adopted sons, will be considered under the title of Partition after the Death of the Father. If an acquisition be made through the co-operation of all the brethren with their father, an unequal distribution should not be made in consideration of filial piety, of a large family to maintain, and the like, nor in right of seniority and so forth; as has been already noticed. Here a question occurs for discussion: if there be four brothers, the father of whom is living, and who are all skilled in their duties; but one acquires

a piece of land, acting under his father's instructions; what form of distribution shall in this case be followed? Does that land belong to him alone, because he made the acquisition? or is the acquisition considered as made by the father, because he partly contributed to it; and shall all the brethren therefore partake of it? In reply to this question it is asked, was this land or other property purchased, or received as a present, or otherwise acquired? Either the purchase was made with the father's sanction, on a reference to him in words to the following effect, at the time when the bargain was proposed, "this man offers to sell me this property; what should be done?" or else the purchase or other acquisition was made by the son receiving express orders from his father to effect it. In the first case, the price being paid out of his own several property; or, in the case of a present received, which was not intended for the father, the donor not having said, "deliver this to thy father," the land *so purchased or received* is the sole property of the son. In the second case, it belongs to the father; but if the price were paid out of the son's own several property, and he merely termed it the act of his father, through the ingenuousness of his disposition, the son shall have a share; and it shall be proportionate to the wealth invested. But the personal labour of the son belongs to the father; for the son is his representative, and subject to his power (Book II, Chap. IV, v. 8). Let it not be argued that the son can have no several property, since his father is owner even of that which is acquired by him (Book III, Chap. I, v. 52): how then should he have a share of the acquisition? That text is considered by JÍMÚTAVÁHANA, and the rest, as merely intending that a son, whose father is living, is not his own master even in respect of his own acquired wealth. For, if sons and the rest have not property in that which they earn, there could not be an acquisition made by them; since acquisition signifies such an act as becomes a cause of property *vested in the agent*. Else, the father having property in that which was acquired by his son during his life time without using the patrimony, all the brethren would have equal shares after his demise. It would follow, that sons and the rest would lose all religious rites, which must be defrayed with money; since the father's property would be revived in that which he himself gave to his sons. Consequently the sacrifice with the moon-plant could not have been accomplished, as recorded in the *Mahábhárata*, by BHÚRIŚRAVA during the life of VÁHLÍCA, nor other ceremonies by other persons during the life of their father. VÁCHESPATI BHATTÁCHÁRYA concurs in this opinion, and in the text of CÁTYÁYANA (Book I, v. 8), which forbids the lending of money to women and the rest, their inability to acquire wealth is the motive of the precept; accordingly children or minors, not sons, are there mentioned.

But others argue from the text which expressly declares the right of a father and the rest to wealth acquired by a son *and others* (Book III, Chap. 'I, v. 52), and from the maxim 'what is clear shall not be explained by 'inductions from other premises,' that a father and the rest have ownership: a right, proceeding from acquisition, *first* vests in the sons; afterwards, property also vests in the father by reason of the son's right, which is subservient to the father's. But the ownership of the son is not devested, for a text declares property common to the married couple; and there is no inconsistency in the contemporary property of father and son, any more than in the property of a wife while her husband lives. The absolute right and independent power of a wife over that which is given to her by her husband, and of a son over that which is given to him by his father, must be established; for texts declare the several property of women; *and it must*

be inferred in other cases, from parity of reasoning, *since* the religious ceremonies of sons and the rest must be defrayed. After the death of the father, another *co-heir* shall receive a share of such property, as appears from the expression, "with supplies from the common estate," in the text of VYÁSA (CX): for that may relate to an acquisition made while the father was living, as well as to one made after his decease.

CX.

VYÁSA:—If a co-heir gain horses, elephants, cars, or weapons of any sort, by his own valour or the like, but with supplies from the common estate, his brethren, *or paternal uncles*, shall be sharers of it:

2. A double sum is ordained for him; and the other parceners must share alike.

As a son has a share of wealth acquired by a father, so shall a father *partake* of wealth acquired by his son. Even according to your opinion, the independent power of a son, after partition, over his whole property, as intimated by CÁTYÁYANA (CIII), must be acknowledged upon *arguments obvious to* common sense. The word "son," in that text, must signify one with whom partition has not been made. Or the son's title causing property to vest in the father, is again revived in regard to wealth given to him by his father. On this point no difference of opinion appears in the *Retnácara* by and other works: for it is said in the *Retnácara*, in the chapter on the Emancipation of Slaves, 'the master has no power over property given 'by him, through favour, to his slave;' and the texts of MENU and others (Book III, Chap. I, v. LII 2, and LIII 2,) are cited *to show the reverse in cases*. MISRA concurs in that exposition. Since the ownership of a wife in that kind of wealth which is called the property of women, is propounded by a special text, her husband alone is owner of every other kind of property. The prohibition of lending anything to women and the rest, as promulgated by CÁTYÁYANA under the title of Loans (Book I, v. 8,) is founded on their want of property. However "infant" *there* denotes a child whose father is deceased, it is merely an instance comprehending a son whose father is living; as has been already mentioned. They thus expound the law.

A father has property in his son, as in grain or the like, because he begot that son. A husband has property in his wife, as the receiver of a present has in grain, cattle, or the like, because she was given to him by the person who begot her. A master has property in his slave in right of purchase or the like. Hence, under the rule, that 'whatever is acquired by a man himself belongs to him,' a father has property in that which is acquired by his son and so forth. But, in the case of female property received through favour and so forth, a stranger may have full dominion over it, with the assent of the woman's husband. Yet in the case of female property given by the *woman's* father, we do not, they say, suppose a right different from *that which is established by* the law.

If it be asked, by way of objection, how can the debts be paid when partition has been made during the life of the father? the answer is, they who enjoy shares must discharge the debts. Here a question occurs for discussion. The father has two shares of property left by the paternal

grandfather, and the sons have one share each; the father shall *therefore* sustain two parts of the debt, and the sons one part each: this is indisputable in the case of a debt contracted by the father, but may be disputed in the case of a debt incurred by the paternal grandfather; for the payment by the son is productive of no benefit to him, and payment by the father alone is beneficial.

CXI.

NÁREDA:—What remains of the paternal estate, out of which the debts of the father have been paid to those to whom payment had been promised *by him*, shall be divided among the brothers; care being taken that the father continue not a debtor.

Let it not be argued, that, because this text shows it necessary to pay the debts of the father when partition is made among brothers after his death, surely his debts must be paid when partition is made in his life-time: and since it appears from the term "successively due," in the text of NÁREDA, which has been cited under the title of Loans, (Book I, v. 198,) that the debt of the grandfather first devolves on the father, and afterwards on the son; and since it must necessarily be paid by the grandson, being due by his father, the grandsons shall therefore contribute one share without interest (Book I, v. CLXVII 2), and the son of the original debtor two shares with interest. From the form of the phrase, "out of which the debts have been paid," it appears that they must be paid previous to partition. Now they cannot be then paid by the grandson; for as yet he has no property, and he is not the person who makes the distribution: it is therefore proper that the son should make the partition, after first discharging the debts with interest. Again; when partition is made by a father, a share is allotted to the grandson, whose own father is dead; but since the law does not make him liable for the debt of his paternal great grandfather, as well as for that of his father, it shall not be discharged by him. *But* the father must likewise discharge the debt of his grandfather; for it ought to have been paid in the first instance by the grandfather. But if he be then unable to discharge it, or the term be yet incomplete, let him require from his sons and grandsons an immediate promise of payment: the debt of a paternal great grandfather, or remoter ancestor, must be *subsequently* discharged in consequence of such promise. In like manner, a promise of paying interest on the debt of the paternal grandfather should be required. But if there be no property left by the paternal grandfather, and only property acquired by the father, then, should the father, making a partition, reserve the greatest part for himself, and give an inconsiderable allotment to his sons, how shall the debts of the father and grandfather be apportioned? If he divide the estate at his pleasure, then, should the father reserve the greatest part of his fortune burdened with a small part of the debts, his sons will be distressed; or if he distribute his fortune like property inherited from the grandfather, still the sons will be distressed. Therefore the matter must be thus reconciled: the father, spontaneously discharging the whole debt, may distribute the remainder among his sons at his pleasure. But if the debts exceed the property, let him give some wealth to the sons, and assess the debts in proportion thereto. However, sons should, without evasion, voluntarily bear their father's burden. But if the father fraudulently or truly say, "my debts exceed my estate, how then should I give shares to my sons?"

and his son's reply, "give us shares of the estate, burdened with proportionate shares of the debts;" there is no law to authorize the independence of sons: however, the matter should be adjusted by the impartial decision of arbitrators. This is founded on the reason of the law. If there be property of both kinds, acquired by the father, and inherited from the grandfather, and also debts of both sorts, then the debts incurred by the father or grandfather shall be distributed in the same proportions with the property: the fortune of the father, and the debts with which it is burdened, shall be treated as the estate of the father; the wealth left by the grandfather, and the debts charged thereon, shall be treated as the estate of the grandfather. This has been sufficiently discussed.

How can partition, made during the life of the father, be called inheritance (*dáyabhága*)? When inheritance is explained 'the heritage which is shared,' the portion given by a father in his life-time being received in right of affinity, and heritage signifying wealth held as property in right of affinity after the property of the former owner has expired, and that being here connected with partition, the description is unexceptionable. According to the opinion, in which inheritance is explained partition of heritage, since it only becomes heritage by the act of partition, heritage is here a subject effected by action,* as in the example "he makes a pot." But, according to the opinion, in which inheritance is explained 'participation or ownership of heritage,' ownership being fully vested in sons and the rest after partition, the wealth is heritage; inheritance, consisting in ownership predicated of them, may be predicated *of heirs* as far as the fourth in descent. This has been sufficiently explained.

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* *Subject*, in philosophical grammar, is of three kinds:

prápya, an effect produced by conjunction, disjunction, and the like, *without altering the form of the substance*; ex. g. visits the city.

vicárya, when the substance remains, but its form is changed: ex. g. makes a bracelet of gold.

nirvartya, when an effect is produced by action, where the former shape of the substance is not considered: ex. g. makes a pot or a carpet. T.

CHAP. III.

ON PARTITION AMONG BROTHERS.

AFTER the natural or civil death of the father, either let the sons live together, or let them divide the paternal estate. This alternative is propounded by MENU (XVIII.) Let the eldest son, in the mode above mentioned (Chap. I, Sect. 1), undertake his father's charge, and support all the brethren, and let them thus live together; or let them live apart: and that living apart is adopted for the sake of religious duties; for, by the performance of all rights, constant, occasional, and the rest, out of several property, the consequent merit is separate, and shared by no other. A separation of abodes is therefore morally right, not caused merely by the perverseness of co-heirs. May not co-parceners severally perform religious rites? No; for it is a certain rule, that the intention of the law is fulfilled by once performing a single religious rite, which is defrayed out of the common property. Since it does not repeatedly occur, it is customary to perform it once only; and the sons of a king, not being separately consecrated to the regal office, unless partition be made, are not entitled to perform the sacrifice called *Rájasúya* and the like, which must be done by a monarch. As for the duty of voluntary gifts and so forth, religious offices may be multiplied, even without partition, by the repeated performance of that duty; but constant and occasional rites are fully performed by a single celebration, as has been already mentioned. Still however, in some circumstances, as in that of the *putréshti* sacrifice for the sake of obtaining offspring, religious duties are multiplied by the separate performance of religious ceremonies, even without partition.

This partition should be made with mutual kindness; for unkindness is censured in the *Herivanśa*.

CXII.

The *Herivanśa*:—No doubt, INDRA! the mutual strife of brothers and of friends gladdens their enemies.

It is requisite that the mother be also dead, before partition can be made by brothers after the decease of their father.

CXIII.

VYÁSA:—For brothers a common abode is ordained so long as both their parents live; but, by making a partition after the death of their parents, their religious duties are multiplied.

If it be argued, that because brothers are enjoined to live together while their father and mother both survive, partition is suggested when one of them, namely, the father, dies: that is denied; for it is a rule, that what occurs first or last in the apposition called *dwandwa* is accepted; each

is meant. The mother and father are both suggested by the word "parents" (*pitrau*), a term formed by the omission of one word (*mátri*), which is understood in this expression; and each of the terms suggested relate to the word "live:" the phrase is therefore explained, 'so long as the mother lives, and so long as the father survives.' Else partition would be directed by this text, when the mother alone was dead. The text of YÁJNYAWALCYA must be explained as signifying that partition may be made after the death of both parents, since it has the same import with the text of VYÁSA.

CXIV.

YÁJNYAWALCYA:—**Let the sons, after the death of their parents, equally share the assets, and equally pay the debts of the deceased.**

Let it not be argued, that, on the contrary, sons are enjoined to live together while both their parents survive, but may divide the estate when either of them dies. SANC'HA expressly declares, that partition cannot be made while either of them survives (XVII).

CXV.

VRIHASPATI:—**On failure of both their parents, partition among brothers is ordained.**

That is, on failure of their father and of their mother. The sense is the same in the text of VYÁSA. While the father lives, let no partition be made, because sons have not power over his effects; but why should not partition of the paternal estate be made while the mother lives? To this some lawyers, adopting the opinion of JÍMÚTAVÁHANA, reply; 'partition of 'the paternal estate, while the mother lives, is not morally right.' Consequently the prohibition against dividing the patrimony while the mother lives is *a moral precept*, like that against eating flesh-meat on the eighth day of the lunar month, and so forth. Hence the sin of infringing a prohibition is the consequence of making such a partition. Or an exception is suggested by this text: it is not morally right; that is, it does not multiply separate religious duties; they are not separately multiplied while the mother lives. Consequently the sense of the text (XVII) is deduced from what has preceded: sons are not independent, that is, they are not entitled to make a partition and so forth; they are not independent while their relation to a surviving mother subsists. Such a partition is invalid in respect of religious duties, and is only valid in respect of property. Hence, while the mother lives, all participate in every religious rite, even though separately performed. Accordingly, as partition is made while the father lives with his consent, so, reasoning from analogy, while the mother survives, partition must be made with her consent. But, in the one case, since the father has dominion over the estate and over his sons, he shall have a double share; in the other case, since the mother has dominion over the son alone, she shall have one share only: and hence the father shall have more than a double share of his own acquired wealth; but property acquired by the mother shall not be divided, since the law does not ordain a partition of it. The text of CÁTYÁYANA (Book II, Chap. IV, v. XV 5) shows, that sons are not their own masters while their mother lives. Consequently, after the death of the father, two periods occur for partition, when the mother dies, or, *while living*, when she consents. But, while the father lives, since he has dominion over all, partition shall be made by his choice alone; the mother's assent is not required: and those who contend for

partition of property inherited from the paternal grandfather, at the option of the sons, think that partition is made by the choice of the father alone, who is induced thereto by the wish *or request* of his sons; for the father is the person who makes the distribution: the text of HÁRÍTA* denies partition without the father's consent; and sons have not immediately such independent power as can enable them to perfect the act *of partition* without reference to another person. Accordingly the mother's assent is not required for partition by a father.

But some lawyers argue from the text which declares property common to the married couple (CCCCXV), that the mother's property, thereby proved, subsists after the father's death, since there is no argument to prove the devesture of the mother's property, although the father's be annulled by his demise; consequently sons cannot divide property which is held in common with their mother, without her consent. It should not be objected, that partition may be made with the consent of any one owner, even without the acquiescence of the mother, as it may without the consent of a brother. The mother having dominion over the estate and over her son, but he having dominion over the estate only, she has greater authority. But the same observation is not applicable to an elder brother; for he is not highly venerable, *like a mother*. However, it is not customary to make a distribution, by which the eldest brother would be aggrieved; or, *if partition be made*, the portion of an elder son is allotted to him as a token of respect. It is not declared in a text cited by RAGHUNANDANA and VÁCHESPATI BHATTÁCHÁRYA (Book II, Chap. IV, v. XV 1), that the younger brothers are not their own masters while the eldest brother lives, and partition cannot therefore be made without his consent? It cannot be argued that the text which has been quoted is intended to forbid a gift or alienation by others while there is an eldest son standing in the place of the father, as directed by MENU (IX); for there is no argument on which the text can be restricted to that limited sense. To the question proposed the answer as No; for the text which has been quoted must of course be explained is, relating to an eldest brother, who bears the burthen of supporting the family, since the law propounded by NÁREDA (XVI) suggests partition among brothers who are unwilling to live together; and the living together or separately appears from the text of MENU (XVIII), and from many other laws, to be the act of all; and since the eldest has no dominion over his younger brothers. The expression, "seniority is founded on virtue or on age" (Book II, Chap. IV, v. 16), is not inconsistent with the phrase, "or even the youngest brother if he be capable of business" (XVI).

VÁCHESPATI BHATTÁCHÁRYA and many other authors do not concede to this opinion; for they do not acknowledge the wife's property in her husband's estate, since she made not the acquisition. But ultimately there is no variance. No ordinance exists, to prove that partition shall not be made by grandsons while the wife of their paternal grandfather survives. But some lawyers infer, that sons are not independent in respect of their mother's property while she lives, but do not think them dependent in regard of property left by the father: as sons have an interest in, but no independent power over, wealth acquired by their father, while he lives; so have they none over wealth acquired by their mother, so long as she survives. These lawyers, though they copy VIJNYÁNÉSWARA, are not now followed. This point has been sufficiently explained.

* The text which is here quoted has been attributed to SANC'HA (v. 17.)

VRĬHASPATI has propounded two forms of partition, with and without a deducted allotment (XXX). That has been already expounded: however, the expression, "with attention to priority of birth," is there a mere instance of a general sense, whereby the greater share of one who is pre-eminent by his good qualities or the like is also suggested, as already mentioned.

CXVI.

VRĬHASPATI:—All the sons shall succeed to their father's estate, as is ordained; but he who is distinguished by science and good conduct, shall take a greater share than the rest:

2. Progenitors become truly the parents of a son, through him whose fame is spread in this world, for science, skill in arts, courage, or wealth, and for knowledge, liberality, and virtuous actions.

"Science;" study of the *Védas* and other branches of sacred literature: and that is peculiar to the three *first* classes, the *Bráhmana* and the rest. "Skill in arts;" knowledge of mechanical trades; and that is peculiar to the fourth tribe and to mixed classes. "Courage;" valour: this appertains to the military class. "Wealth;" riches: this alludes to the commercial tribe, not to the sacrificing priest, or to the *Súdra;* for riches are censured *as a pursuit* of these classes. "Knowledge;" the knowledge of GOD: this may belong to men of all classes by the power of destiny. "Liberality;" the meaning is obvious: it may relate to men of all classes. "Virtuous actions;" such as are followed by purity: or (reading *crayéshu* instead of *criyásu*) the purchase of commodities for traffic; meaning also the sale of them; and this appertains to the commercial tribe. By the connective particle, other duties enjoined to the several classes are comprehended *in the text.* "Projenitors become truly the parents of a son, through him, &c.;" it is therefore proper that a most excellent share should be allotted to him.

Wealth is incidentally mentioned in this text; or it is intended to show, that a superior share shall be allotted to one who is able to acquire riches. "Father of a son;" the word, from its etymology,* signifies related to an excellent son.

When partition is made among sons, an equal share must be allotted to the mother with her sons, and to the wives of the paternal grandfather with their grandsons; as has been already mentioned. But in the case of a *Súdra,* it will be declared, that no deducted allotment shall be given *to the first born.* RAGHUNANDANA.

This is grounded on the text of MENU (LXVI). It may be objected, that, if the deducted allotment, being included in the shares, render them unequal, this would contradict the observation of JÍMÚTAVÁHANA and others, in expounding the text of MENU (XXIX), that, 'unequal partition on 'account of filial piety or the like is forbidden, not the deducted allotment, 'which is no share.' But VÁCHESPATI-BHATTÁCHÁRYA holds, that 'the 'deduction in favour of the eldest by birth is denied to the servile class, not 'the deduction in favour of one who is pre-eminent by his good qualities.'

* The etymology is thus stated in the text; *Putrin* = *putra*, son, + *in*, bearing the same sense with *matup* (or *mat*), a termination denoting excellence.

The text will be otherwise expounded under the title of Partition among Sons by women of the four classes. The case of him who, through laziness or the like, refuses to labour for the support of the family, or of one who, being very able to earn a livelihood, supports his own family without using the paternal estate, has been already considered.

The texts of CÁTYÁYANA (LXXIX 1 and 2) have been explained in the preceding chapter. The first verse relates to partition made by the father. The second expresses, that a nephew, whose own father is dead, shall receive a share from his paternal uncle. The condition, "provided he had received no fortune from his grandfather," must be extended to this case. Consequently, if the grandsons, having received allotments from the paternal grandfather in his life-time, reside apart, and their uncles remain united with their own father, in that case, when these make a second partition, the grandsons shall receive no share. However, grandsons are entitled to obtain partition of that property which had belonged to their paternal grandfather; but the fortune previously allotted to them bars a second partition of the same estate. The text of YÁJNYAWALCYA (LXXVIII) has the same import with the last hemistich of the second verse; and the third (LXXIX 3) relates to the same subject.

The text of DÉVALA (LXXXI) is thus explained in the *Retnácara*: 'partition among undivided parceners, and a second partition among divided 'relatives living together after re-union, extends to the brother, to his son, 'and to the son of that son; it stops with the son of that grandson, being 'fourth in descent *from the common ancestor*.' "Fourth," counted from the owner of the estate *inclusively*, is preceded by the inseparable particle *án* (or *á*), which denotes 'limit *of space or time*.' Consequently, if brethren live together after the death of their father, a brother shall receive a share when partition is subsequently made; or should one of the brothers die before his father, his son shall take his share; should he also die before his grandfather, his son shall receive the share: and if this last also be dead, his son shall not take the allotment; for he is more remote than the fourth in descent. This rule is applicable where partition had not been made; and "second" does not relate to this case. Again: two brothers have re-united themselves; afterwards their sons, grandsons, and great grandsons, die: in that case the son of the great grandson shall not take a share: In the gloss of the *Retnácara*, it is said, 'extends to the brother, to his son, '&c.:' brother denotes the son of the re-united heir, or son of the uncle; for it is there remarked on the text of DÉVALA (LXXXII), that 'it is applicable, when, partition not having been made, property, not enjoyed by one co-heir, is solely enjoyed by another residing in the same province.' For the brothers are separated; but some property remaining undivided, is successively enjoyed by one brother, and by his son and other descendants, and is not enjoyed by the other nor by his son and descendants: afterwards, when partition is claimed, a considerable lapse of time intervening, this text regulates the decision. Consequently, if it be claimed by the brother, by his son, by the son of that son, or by the son of this grandson, partition shall take place; but if it be claimed by the son of that great grandson, partition shall not be made. However, property vests in the occupant, because the right of the other is anulled by adverse possession: accordingly the text is pertinent; "Except on failure of kinsmen allied by the funeral cake, the claim of kinsmen allied by family only is not valid." Here affinity by the funeral cake is referred to the owner of the property; consequently it is not extended to the fifth in descent: and this rule is applicable when the party

resided in the same province; but if he resided in a foreign country, property is only devested by usucaption after the seventh generation, as will be mentioned.

But some expound the text of DÉVALA (LXXXI), 'among undivided parceners (meaning heirs who are re-united, and those between whom partition has not taken place), and among divided relatives (or those between whom partition has been made), who live together, that is, in the same country, a second distribution, or partition made after re-union, and a division of property, remaining in parcenary when the *first* distribution was made, and *solely* enjoyed by one heir, extends to the fourth in descent: but if they do not live together, *that is, in the same country,* it extends to the seventh generation, as will be mentioned.' They expound the subsequent text (LXXXII), 'so far, that is, as far as the fourth in descent, relatives, 'or persons sprung from the same family, are *sapindas*, or connected by the 'mutual relation of giving and receiving the funeral cake. Beyond him, 'namely, the fourth in descent, the funeral oblation is rescinded; the rela-'tion by the funeral cake is cut off. What follows from these premises? 'The legislator adds, Sages admit that succession follows the funeral obla-'tion; if there be a connexion by the funeral cake, participation in heridi-'table property is acknowleged; that is, inheritance takes effect if there be 'such a connexion. This is the sole purport of the phrase.' Is it not superfluous to say, because property is vested in the occupant, the fifth in descent shall not partake of the heritage; for he *of course* is not entitled to inherit, since the right of the fourth alone is propounded? It should not be argued, that the text concerns the case where the deaths happen regularly, the owner dying first, and his son afterward. Were it so, "undivided" would be a superfluous term; for, in the case of undivided coheirs, should successive persons die regularly, (the son after the father,) participation may extend even to the hundredth generation. It is not ordained that partition among the descendants of partners in commerce shall not extend to the fifth or remoter descendant. To the question proposed, it is answered; in the expression "divided heirs," the regular decease of the father before the son is supposed; but in the phrase, "undivided parceners," the premature death of sons before their fathers is supposed. Or this law may not relate to re-union; for the text of BAUDHAYANA (III) establishes the succession of the sons of a re-united heir; and since they are not divided, it is also proved by this circumstance. Consequently, by mentioning partition, property is declared. For instance, the great grandson of an undivided co-heir shall share with the brother of his paternal great grandfather; that is, any property which had remained in common, shall be shared by the great grandson of a divided heir. This coincides with the text of CÁTYÁYANA.

But others expound the text, 'among undivided *parceners*, and *among* 'divided heirs living together after re-union, partition extends to the great 'grandson of the owner.' Or, among heirs undivided from the day of their birth, or living together re-united after a partition, &c. The re-union of partners in trade is excluded. It follows, therefore, that re-union is only affirmed of brothers and the rest. Among them, a second distribution of heritage extends to the great grandson. The meaning of the text is thus obvious. A subsequent verse (LXXXII) declares generally, that a great grandson shall succeed to the heritage.

No author has inserted the text of CÁTYÁYANA (LXXIX 1) under the title of partition made by a father. But on the reading, "should a son die (*mrité putré*), the agent in the sentence, or person by whom shares are

allotted, is presented in answer to the question, son of whom? as in the phrase, he behaves with piety towards his mother, and in similar forms of expression: now by thus declaring, that, should the son of him who makes the partition be dead, the son of that son shall partake of the property, it surely follows that this relates to partition made by a father. Accordingly the expressions "receive his share" and so forth, are not unmeaning *nor inaccurate*. But on the reading of MISRA (*nijé prété*), which he expounds, 'when the brother himself dies,' the text does not seem to regard partition made by a father. As in the phrase, when *the principal* himself is absent let the son support the family, "himself" signifies the person who ought to support it; so, in this phrase, "himself" signifies the person who should regularly succeed to the estate: by so explaining that reading, the text must surely relate to partition made by a father: and accordingly the expressions "receive a share," and so forth, cannot be unmeaning. But "undivided" must signify one with whom partition has not been made; for the brother's share is implied. However, this text must be adduced, as well when the proprietor is living but his son dead, as when both the proprietor and his son are living but the son of that *son* dead, or when these are all living but the son of that *grandson* dead. The law may be thus concisely expounded.

CXVII.

VAŚISHT'HA:—A share of the heritage with the brothers shall be allotted to the widows who have no offspring, but are supposed pregnant, *to be held by them* until they severally bear sons.

Since women receive no share when partition is made among brothers, the text appears unmeaning. For this reason CHANDÉSWARA proposes the subjoined interpretation: "widows" here signify wives of deceased brothers. If they be supposed likely to bear sons, a share must be also allotted to them: but if no son be produced, that share belongs to the brothers; and the widows must be maintained by them. Consequently shares are only alloted to widows for the behoof of their sons. The brothers succeed to the share of a childless coheir, although he leave a wife; and they must support her: this follows evidently *from the exposition of the text*. Again; on a cursory view this appears inconsistent with the text cited in another place (CCCXCVIII). It is thus reconciled by JÍMÚTAVÁHANA and others: a wife equal in class succeeds to the estate of one who leaves no son; but a wife of unequal class shall be supported *by the collateral heirs*. Others reconcile the apparent difficulty in another mode. The whole subject will be discussed under the title of Succession to the estate of one who leaves no male issue.

It should be here noticed, that a share must also be allotted, from parity of reasoning, to a stepmother who is supposed likely to bear a son: and such is the consistent purport of the text, as explained by JÍMÚTAVÁHANA and the rest. But, according to those who contend for the right of the stepmother to receive a share when partition is made among brothers, the phrase, "until she bear a son," would be unmeaning. To this it is answered, an *equal* share with the brothers must be set apart until she bare a son; but if no son be produced, that share shall be taken by the brothers. But the allotment of the stepmother, being directed by another text, shall not be resumed, even though she bear no son. Others consider this text as relating to the son begotten on an appointed wife by a kinsman. This will be explained in its place.

This partition can only be made after discharging the father's debts (CXI). RAGHUNANDANA and others expound the term which occurs in that text (CXI), 'to those to whom payment had been promised by the father.' But the debts of the paternal grandfather must be discharged previous to partition of wealth inherited from him. If there be no property acquired by the father, and the whole estate were left by the paternal grandfather, still, since it became the property of the father, his debts must be paid before any partition can take place: and if the paternal grandfather should leave no property, his debts must be *nevertheless* discharged; and that before partition: else the subsequent arrangements would be difficult. In fact, debts of the paternal grandfather become debts of the father; they are chargeable on him in the first place; next on his son, as has been already noticed: but the great grandson of the original debtor shall not be compelled to pay the debts, unless he take the assets.

In what circumstances is he considered as holding the assets? Is it only when he becomes the *immediate* heir of his ancestor, who has survived his own son and grandson? or *is he* likewise *considered as such*, when the son succeeded to the estate on the death of the proprietor, and after him the grandson; and on his demise the great grandson? The answer is, when the estate of the ancestor passes successively to his son, grandson, and great grandson, this last is not the *immediate* heir of his great grandfather, but of his own father. Else, a man succeeding his father in the possession of property which had been conferred on him by any person whomsoever, would, *with equal propriety*, be considered as holding assets of the donor. Although the son of a donee be not considered as holding assets of the donor, because his title, *being derived from succession*, is very different from one which is held under a gift, why should not a man be considered as holding assets of the donor, if he himself be the person on whom the property was bestowed? The term being limited to succession in right of affinity or relation, for the sake of removing this apparent difficulty, he cannot in this case be considered as successor to the estate of his paternal great grandfather, for he succeeds in right of his relation, as son, to his own father. Consequently he who succeeds to the estate of another in right of his relation to him, is considered as holding assets of that person. A brother's grandson inherits, in right of his relation to his great grandfather, an estate devolving on him from one who leaves no heir within the degree of brother's son: must not he pay the debts of his paternal great grandfather? He does not succeed solely in right of his relation to his paternal great grandfather; but as great grandson of the proprietor's father. There is consequently no difficulty. It would be vain to pursue minute disquisitions.

It should not be argued, that because the debt was successively due from the son and grandson *of the original debtor*, it therefore becomes, in *respect of the great grandson*, a debt of his father and grandfather. A debt is said to become successively due *from a son and grandson*, merely to show that the debt of the paternal grandfather must be paid out of the property of the father: else even the debt of the paternal grandfather would be payable with interest. Nor should it be objected, that the law which directs the payment of the grandfather's debt without interest, would on this supposition become nugatory. When a debt has been contracted after the death of the son, the grandfather subsequently dying, his debt cannot devolve on his son, because that son is not living: the text which directs payment without interest, might be pertinent, as relative to this case only.

Nor should it be said this is admissible. It is resisted by common sense.—Therefore, "paternal" signifies relating or appertaining to the father; and the similar derivative from grandfather bears a similar sense: that relation consists in the producing *or incurring of the debt;* but in respect of the great grandfather there is no difficulty, for, although his debt devolve on his son and grandson, it was not incurred by them.

RAGHUNANDANA and others remark on a phrase in the text above cited (CXI), "care being taken that the father continue not a debtor," that if they cannot *immediately pay the debt,* they must promise the creditor to pay it *at a subsequent time* in proportional shares. That promise will not run in this form, "this debt shall be discharged by me." Were it so, since the father would not be declared exonerated from the debt, it could not be said, "care being taken that he continue not a debtor." Consequently the debt must be undertaken in proportion to the share received out of the heritage; for instance, if the debt of the father amount to a hundred *suvernas, four brothers must severally declare,* "twenty-five *suvernas* thereof constitute a debt due from me." Were it so, would not a son be liable to pay interest anew on such a debt, although it had already accumulated to its highest limit; for the rate of interest ordained by the law, when it has not been *expressly* stipulated, cannot be barred? It should not be argued, that it is not a debt in the rigorous sense of the term, because there appears no pecuniary transaction; and for this reason no interest is paid. Were it so, no interest would be paid on the principal sum, *although it had not accumulated to its highest limit.* To the question proposed the answer is, it remains the same debt after the promise of payment in like manner as a debt sold: hence interest does not recommence. As in the case of a debt sold, should it happen to remain unpaid, the debtor incurs the sinful taint arising from the non-payment of a debt due to a person of the buyer's class, not that which arises from the non-payment of a debt due to a person of the seller's tribe; and, a preference being given in the order of the classes when debts are discharged, as the preference follows the tribe of the buyer, not that of the seller; so in this case likewise, should the debt happen to remain unpaid, the son alone falls to a region of torment, not his father. Again; if it be not discharged by him, it must be paid by the son's son; for it was the debt of his grandfather. But if it do not successively devolve in this manner, it shall not be discharged by the son's grandson against his will.

It should be here remarked, that he who is averse from the performance of his father's obsequies, shall not obtain a share of the inheritance (CCCXX); if land be assigned for the father's *śráddha,* by the unanimous consent of all the parceners, expressed in this form, "this land is set apart for the paternal *śráddha,*" such land must not be divided so long as they possess any means of support: this practice subsists in some countries.

CXVIII.

CÁTYÁYANA:—The house, arable land, and quadrupeds, which are discovered *to have been the property of the deceased,* must be equally divided: if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law.

The term is explained "ordeal" by RAGHUNANDANA.

CXIX.

VRĬHASPATI :*—Thus MENU declared, that household utensils, beasts of burden, weapons, milch cattle, ornaments, and slaves, must be divided, when discovered, among the heirs; and that, if effects are *justly suspected to be* hidden, a discovery must be obtained by the *cósha.*

The *cósha,* says RAGHUNANDANA, is a particular form of ordeal. Lawyers explain it ordeal, by touching water in which a principal idol has been washed. More on this subject may be found under the title of Trial by Ordeal.

On the death of the father, the mother has a claim to an equal share with her own sons; their mothers (stepmothers), or his mothers (wives of the paternal grandfather), *for the term is variously explained,* take the same allotment; and the unmarried daughters, each a fourth of a share (LXXXV). Mothers, says VISHNU (LXXXVI), take allotments proportionate to the shares of sons, and so do unmarried daughters. Since this coincides with the text of VRĬHASPATI (LXXXV), therefore, according to the shares allotted to their own brothers, unmarried daughters shall take a fourth; they take a quarter of the share allotted to their own brothers: such is the exposition delivered in the *Retnácara.* But to her who has no brother, such a share must be given as ought regularly to be allotted *if she had one:* a quarter of the share, which would be allotted to a son of the same class with her mother, shall be computed and given to the damsel for the purpose of defraying her *nuptial* ceremony: such is the determinate sense of the text. The meaning is, that the fourth part *of a share* shall be given out of the whole estate. A fourth part being mentioned in several texts, so much only shall be given; but the purpose is *to defray* the *nuptial* ceremony.—Such is the interpretation proposed in the *Calpateru,* with which the *Mitácsharà* and *Pracáśa* concur, as is remarked by CHANDÉSWARA. Consequently the brother of a daughter produced by the *Bráhmaní* wife, shall have four shares; and his sister shall have a fourth part of that allotment, or one share: but the daughter of a *Cshatriyá* wife shall have a quarter less than that share, and so forth in the order of the classes. Hence the meaning of the remark, that the fourth part of a share shall be given out of the whole estate, is that a quarter *of a share* shall be made good by taking a *sufficient* sum out of the allotments of all the brothers. All this is copied from CHANDÉSWARA.

It follows from what has been said, that the law does not positively direct a share to be given to sisters as well as to brothers, but their nuptials must be defrayed by assigning a fourth part *of a share* for that purpose. Accordingly the sister taking a fourth part, and defraying the charges of her nuptials with some part of the money, may keep the remainder; but her brothers must not defray her nuptials with a very inconsiderable sum, by any *unbecoming* means *of parsimony:* for this end, the allotment of a fourth part is directed. Hence it is said, the purpose is to defray the nuptial ceremony. On this subject MISRA says, the allotment of a fourth part is indeterminate; but the meaning is, that so much shall be given as may be sufficient to defray the expenses of the marriage. RAGHUNANDANA observes, that the text which ordains the allotment of a fourth part, intends the appropriation of a sufficient sum for the nuptial ceremony.

* This text is attributed to CÁTYÁYANA in some Digests, and is there read, "Thus BHRĬGU" instead of "Thus MENU." T.

CXX.

MENU :—To the *unmarried* daughters let their brothers give portions out of their own allotments respectively, *according to the classes of their several mothers* : let each give a fourth part of his own distinct share ; and they who refuse to give shall be degraded.

JÍMÚTAVÁHANA, commenting on this text, remarks : since it is expressed "let brothers give portions," and since degradation is denounced if they refuse to give the allotment, it follows that daughters do not receive such portions as having a right to share in the succession. To one brother who is entitled to *a share of* the succession, another brother does not give a portion out of his own allotment : if a daughter were entitled to partake of the succession, the parceners not voluntarily yielding her share, would be compelled by the king. Hence degradation, instead of amercement, is properly stated *in this case* under a title of jurisprudence. For this reason it is said, " out of their own allotments." A portion may well be given by a parcener out of his allotment, to one who is not entitled to partake of the succession. HELÁYUD'HA and others hold, that 'so much only should 'be given as is sufficient to defray the expense of the sacrament *or marriage:* 'but a fourth part is mentioned by way of example.' If there be brothers unequal in class, and none of equal class, still a portion must be given ; else the investiture *or marriage* of a sister would in this case fail. Nor should a quarter of their own share be given, *by brothers inferior in class*, to the daughter of the *Bráhmenì* wife : for CHANDÉSWARA observes, that the portion shall be fixed at the fourth part of the share which would belong to a son of the same class.

The text of MENU (CXX) is thus interpreted : the fourth part of the shares which are allotted to brothers of the same class with the sister shall be computed ; and deducting that sum, *in due proportion*, out of their own several shares, the brothers shall give it as a portion to the unmarried daughters. If the text be read *swébhyah swébhyah* instead of *swébhyó' nśébhyah*, the repetition supposes two or more brothers ; and the sense is, taking a quarter of the allotment of a brother equal in class, let the brethren give it as a portion to the unmarried daughters. The same meaning is also conveyed in the gloss of MISRA. It is not, however, the sense of the text, that all the brethren shall take the sum out of the allotment of those brothers only who are equal in class *with the unmarried sister ;* for the rest of the brethren cannot take the fourth part of the share belonging to the brother who is of the same class *with the unmarried sister:* the expression "out of their own allotments" would be therefore unmeaning, and the investiture *or marriage* of a sister might fail, should she have no brother equal in class.

It is directed, that a fourth part of a share shall be given ; and that *allotment*, according to CHANDÉSWARA, is merely intended to defray the expenses of the *nuptial* ceremony. Others hold, that so much only shall be given as is sufficient to accomplish the sacrament *or marriage.* On this subject JÍMÚTAVÁHANA remarks, that if the estate be considerable, a sufficient sum for the nuptial ceremony shall be given ; and a fourth part *of a share* is not positively directed. This must be understood where the number of daughters and sons is equal : if the number be unequal, a large sum is *thus* given to the daughters, or the sons are altogether deprived of their

shares. Nor can this be proper; for the son is pre-eminent. A fourth part of a share must be given to sisters; but if they be twice or thrice as numerous, they would receive a greater sum than their brothers; if they be four times as numerous, the brothers would be deprived of their shares; if they be five times as numerous, the case would be very puzzling. Yet such a case may occur. The rule for giving a quarter of a share cannot *therefore* be received without exception. In fact, the rule only bears, that a brother shall give a fourth part, if he have a considerable allotment. But if sisters be few in number compared with the brothers, or if there be no brothers, another rule of VISHNU must be adduced.

CXXI.

VISHNU:—**The marriage and other ceremonies of unmarried daughters, must be defrayed in proportion to the wealth *inherited*.**

The text of MENU may be understood in two senses, from the ambiguity of the terms. Let them give to each sister a portion equal to the fourth part of the share allotted to a brother of the same class, making up the sum out of their own allotments respectively. Or let them give to their sisters one fourth part of their respective allotments. Consequently, should the sisters and brothers be equally numerous, a quarter of each allotment must be given; if they be less numerous, a portion equal to a quarter must be made good *for each sister;* if they be more numerous, let the brothers, deducting a fourth part from their own allotments respectively, throw all these sums together, and defray the marriages of all their sisters out of this fund. However, the rule of giving a quarter is only intended to ensure the purpose. For instance; a wicked brother might say, "my sister "shall be given to this abject person, who will accept a small nuptial "portion; I care not for the censure of the world, provided my wealth be "increased." Prevented in this design, he must obtain an honourable and suitable match for his sister. He must give so much, within a quarter of his own allotment, as suffices for such a marriage. However, there is no harm if he exceed the quarter. But, if the precept for allotting a fourth part of a share be universal, as supposed by CHANDÉSWARA, then, should two sons inherit a fortune of ten trillions, they would both be guilty of a moral offence, if they happen to expend less than half a quarter of that sum on the marriage of a sister. Now that is not consistent with common sense. Hence the precept, conveyed by the rule, is this: let a brother give money, not exceeding a fourth part of his own allotment, until the sacrament be completed for his sister.

The *Retnácara* and other works, and RAGHUNANDANA and the rest, concur in expounding 'sacrament' as denoting marriage. The term may signify the ceremony of giving a name and so forth; why is it not so explained? To this objection we answer; the ten sacraments are only necessary for twice-born men, not for *Súdras*, nor for women. Authors therefore consider the portion assigned as intended only for indispensable sacraments. The investiture and other ceremonies of a brother, as subsequently mentioned, concern men of twice-born classes: marriage is the only sacrament for a man of the servile class.—This is remarked by VÁCHESPATI BHATTÁCHÁRYA; 'for other sacraments besides marriage, are in respect 'of the *Súdra* voluntary, like the consecration of a pool or other *spontaneous* 'act of religion; they are not required to qualify him for offering funeral 'cakes.' He adds, 'other sacraments are performed by men of low classes,

'on account of their riches, to attain the rank of *Sat'súdra.*' This is founded on the following text.

CXXII.

The *Brahme-purána* :—A man of the servile class universally obtains marriage as his only sacrament.

The word "universally" denotes that marriage alone is constantly required. Let it not be argued that a *Súdra* may use holy texts where another sacrament is voluntarily performed.—The text of YAMA also forbids the use of prayers on other occasions; "the servile class shall be so governed "the sacraments being performed without holy texts." That being the case, since the text of YAMA forbids generally the use of prayers at sacraments *performed for men of the servile class*, may not their marriages be performed without holy texts? That is admissible, and such a practice occurs in many instances. Be it so in respect of *Súdras:* how are other sacraments of women merely voluntarily? It must be so held in respect of ceremonies for women of all classes; for the author has omitted to mention it, merely because the preceding reasoning admits of no exception. But those who are disposed to argue that all the sacraments are requisite for *Súdras* and for women, but their marriages alone are celebrated with prayers, are obliged, in support of this opinion, to give an extension to the meaning of the words "nuptials" and "marriage" which occur *in texts*, as used not in an appropriate sense, but figuratively, for sacrament in general. This point must be so understood from the text which expresses, "the nuptials of women sprung "from twice-born classes are celebrated with prayers."

Since the gift of a share and of a nuptial portion is directed by two different texts, must not both be given? No; for the text of YÁJNYAWALCYA mentions the fourth part of a share as given to defray the ceremony.

CXXIII.

YÁJNYAWALCYA :—For any of the brothers, whose investiture and other ceremonies had not been performed *by the father*, those ceremonies shall be performed by brothers, of whom the sacraments have been completed; and for their sisters, by giving a fourth part of their respective shares.

On this text VIJNYÁNÉSWARA comments: 'by brothers making a partition after the death of the father, the investiture, and other ceremonies, for 'brothers not already initiated, must be performed out of the whole estate; 'and, for sisters, of whom the sacraments have not been completed, those 'ceremonies must be performed, each brother contributing a fourth part of 'his own allotment : hence it appears, that daughters shall participate after 'the death of the father.'

CXXIV.

DÉVALA :—A nuptial portion shall be given to *unmarried* daughters out of their father's estate.*

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* See the sequel of the text at v. 420.

CXXV.

VYÁSA :—For any of the brothers, whose investiture and other ceremonies had not been performed, the other brothers, of whom the sacraments have already been completed, shall perform those ceremonies *at the expense of the paternal estate* : and for *unmarried* sisters, the sacraments shall be completed by their elder brothers, as the law requires.

Since a nuptial portion is ordained in this and in many texts, and a fourth part of their brother's allotment is stated in other texts, by MENU (CXX) and the rest, the gift of these portions must be argued *in different cases* upon the preceding reasoning, CÁTYÁYANA propounds both forms.

CXXVI.

CÁTYÁYANA :—For unmarried daughters a fourth share is ordained, and three shares for sons; but if the estate be small, a daughter is considered as having a right *to a sufficient portion, without determining the rate.*

The *Retnácara* has this comment: 'If the portion fixed at a fourth 'part of a brother's allotment be insufficient, and a larger sum be required to 'defray the charges of the nuptial ceremony, a girl has a right to that sum, 'wherewith her marriage may be defrayed: so much, therefore, must be 'given by a brother, out of his own allotment, to defray his sister's nuptials.' It should not be said, that the same objection occurs as above-mentioned; if the sisters be numerous, brothers might be reduced to a small allotment, or be altogether deprived of their shares. Brothers are not reduced to a small allotment, nor altogether deprived of their portions, by dividing the estate into shares according to the number of brothers quadrupled and added to the simple number of sisters, and allotting four shares to each of the brothers and one share to each of the sisters. Nor should it be objected, why has not this mode been noticed by JÍMÚTAVÁHANA? It was his independent choice *to omit it*. The sense of the text is, if the whole estate be small, daughters have a right, that is, a claim similar to property. The meaning has been explained in the *Retnácara*. According to this construction, the texts of DÉVALA and the rest may relate to the case where the estate is small; and the allotment of more than a fourth share is therefore authorized. But, in fact, this should only be admitted when the estate is very inconsiderable; because an unmarried daughter is, as it were, a debt left by the father; since a text *declares him criminal* if his daughter's marriage be not accomplished, and another law forbids the sale of a damsel.

If a damsel, yet unmarried, arrive at puberty in the house of her father, he is guilty of infanticide *by detaining her at a time when she might have been a mother*; and the damsel is held degraded to the servile class.

That country is held degraded, wherein dwells a man who has sold *his daughter to the* embraces *of a purchaser:*

But Jímútaváhana otherwise expounds the text of Cátyáyana (CXXVI): if the estate be inconsiderable, daughters have a right to one share, and brothers to three. The opinion delivered in the *Retnácara*, though true by the letter of the law, seems inconsistent with common sense; for it may sometimes happen that the nuptial ceremony could be defrayed with less than a fourth part of a share. If the father leave no property, how shall a sister's marriage be defrayed? It is not any way defrayed; for the texts of Vyása and Dévala (CXXIV and CXXV) direct, that the cremonies shall be performed out of the paternal estate; it is not indeed expressly mentioned in other texts, but a rule directs, not to explain by other arguments what is already obvious.

CXXVII.

Náreda:*—Or, if no property of the father remain, the investiture and other ceremonies must be performed out of their own shares, by brothers, for whom those ceremonies have already been performed.

It should not be argued from this text of Náreda, that if there be no property left by the father, the nuptial ceremony must be defrayed out of their own acquired property received in alms or the like. That is not admitted by Jímútaváhana. He thinks, that Náreda propounds the mode of effecting the investiture and other ceremonies for a brother, when there is no property left by the father, having already propounded (CXXVIII) the necessity of performing those ceremonies for brothers, as appears from the terms of that text (CXXVIII) being in the masculine gender. Consequently, since he had premised the investiture of brothers, the same ceremony must be intended by the context, not the marriage of a sister; and both texts of Náreda must be so expounded.

CXXVIII.

Náreda:†—For any of the brothers, whose investiture and other ceremonies had not been performed by the father in due order, the other brothers shall perform those ceremonies at the expense of the paternal estate.

But others hold, that, reasoning from analogy, the marriage of a sister must be defrayed *by brothers* out of their own acquired property; else, it would be imputed as a great offence to the father, that the marriage of his daughter did not take place. Jímútaváhana himself has used arguments drawn from analogy, in treating of Inheritance. For example; in commenting on the text of Yájnyawalcya (LXXXIII), which denies the participation of a wife, to whom female property has been already given, he quotes the text concerning a superseded wife (LXXXVII): now this is an argument drawn from analogy; and that which is established in one case, is applicable to another, unless a special objection occur. No difficulty is even supposed upon the interpretation of those who consider the feminine as understood in the masculine terms of the text. If the particular practice established among the *Bráhmanas* of this country by the mighty

* This text should regularly follow that numbered CXXVIII, but I do not alter the arrangement of the original. T.

† Attributed to Vyása in the *Vivádárnava Setu*.

prince BELLÁLA SENA, who possessed unbounded powers by the favour of the Supreme Deity, be considered, the *Bráhmana*, who is selected by the priest of the family, must accept a damsel whose father is deceased, to secure the bliss of all her father's lineage: hence the charges of the marriage must be any how defrayed *by her natural guardians;* else they would infringe the respect due to her father's race. This practice, though not enjoined by the law, is here mentioned, because it has universally prevailed among the *Bráhmanas* of *Rád'ha*. MISRA also acquiesces in this opinion.

It should be observed, that, to acquire the rank of *Satśúdra*, it is necessary for the offspring of a respectable *Śúdra* to perform the investiture and other ceremonies: and this has not been ordained by the law, but is founded on custom alone.

CXXIX.

SANC'HA and LIC'HITA :—An unmarried daughter shall take the ornaments of a virgin and the female property given *to her mother* at the time of her nuptials.

The unmarried daughter takes "the ornaments of a virgin," that is, her own ornaments, such as bells worn on the ankle and the like.

The *Retnácara*.

The meaning is, that ornaments or the like, which have been worn by a daughter in the house of her father, the brothers shall not divide after his death, deeming them paternal property, but shall relinquish them to the damsel. "The ornaments of a virgin" may signify ornaments which belonged to the mother while she was a virgin, and what was given to her at her nuptials, as expressed in the following text.

CXXX.

BAUDHÁYANA :—Daughters shall take the ornaments of their mother given *her* at the time of *her* nuptials, and other effects, *such as clothes and the like.*

The term used in the text signifies, given at nuptials. They shall also take, besides the ornaments, other effects which were given to their mother at the time of her nuptials, such as clothes, metallic vessels, and the like; and this must be understood when the mother is deceased. The subject will be further discussed under the title of Succession to the Property of a Woman. It has been briefly noticed in this place, being suggested incidentally. That a girl shall not take any other property, is intimated in the following text.

CXXXI.

BAUDHÁYANA, after premising the right of inheritance :—Those who have not faculties *enlightened by knowledge of the law*, shall not take the heritage.

This text, grounded on scripture, denotes that women are not capable of inheriting. The term (*nirindriyáh*) is explained in the *Pracáśa* 'destitute of strength,' *meaning the weaker sex.*—This, as is observed in the *Retnácara*, relates to other women than those for whom shares have been ordained. Accordingly DÉVALA (CCCCXX) mentions the succession of a daughter to

the estate of one who leaves no male issue. This shall be discussed under the title of Succession to such person.

The following text enjoins the investiture and other ceremonies for brothers:

CXXXII.

VRIHASPATI:—For younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers shall perform them out of the collected wealth of the father.

Some consider the term *yavíyasah* as substituted for *yavíyánsah* with the freedom exercised by Sages, omitting the regular inflection and the prolongation of the vowel. (*It consequently signifies younger brothers.*) Others take the term in its regular sense, "of the youngest;" and expound the phrase, 'out of the common estate of the youngest *and other brothers*.' In effect there is no difference. The *Retnácara*.

The first interpretation is obvious; in the second, "out of the common estate" is added to show that the joint stock is meant, it being already suggested that the ceremonies must be performed out of the estate of the father, in which the youngest brother has an interest: now the youngest has a claim on the common estate.

It is remarked in the *Retnácara*, upon the text of VYÁSA (CXXV), that "sacraments of sisters" signifies their nuptials. On the texts of YÁJNYAWALCYA and NÁREDA (CXXIII, CXXVIII and CXXVII), it is remarked in the same work, 'that the several sacraments of brothers intend the ceremonies, from that which is performed on the birth of a male, to his investiture with the mark of his class.' After the death of a father, the eldest brother is alone competent to perform those rites; but in respect of marriage, he whose investiture and other ceremonies have been performed, is alone competent *to direct the nuptial ceremony* for himself, whether his father be living or dead. Accordingly many Sages have used the terms "elder brothers," and "brothers of whom the sacraments have been completed." If it were implied that the sacraments shall be effected by money, those epithets would be unmeaning. It is not meant that younger brothers, or those of whom the sacraments have not been completed, shall not contribute to the expense of a brother's investiture: for that would contradict common sense; because the third brother would contribute nothing towards the investiture of the second, but would receive a contribution from him for his own. On what argument can this be shown to be consistent with common sense? If it be proposed on the ground of the law which states that the charges must be defrayed by elder brothers of whom the sacraments have been completed, not by those for whom those ceremonies have not been performed, (for that removes the disparity of requiring those of whom the sacraments have not been performed to defray the charges of their own investiture,) still the epithet "elder" would be unmeaning. If it be alleged, that when a ceremony other than marriage is erroneously performed in an irregular order for a younger brother before his elder, the due order being a part, *not the essence* of a right, the ceremony is fully accomplished by the performance of the principal *and essential* part, although it have failed in an *unimportant* point; and the text is intended to exempt the fourth brother, whose sacraments had been completed before his elder brother's, during the life of his father: still the consequence is not

consistent with common sense; for the plain inference is, that every one of those for whom the investiture and other ceremonies have been performed, shall contribute money *for the sacraments of another brother*. Consequently all the brothers, whether elder or younger, whether their sacraments have or have not been completed, shall contribute money for the ceremony *to be performed;* but the eldest alone, whose investiture has been performed, is competent to conduct the ceremony. The sacrament to be completed is the investiture with the mark of the class, not any one ceremony; since one for whom the ceremony of tonsure only has been performed, is not qualified for acts of religion.

CXXXIII.

MENU:*—*Till he be invested with the signs of his class* he must not pronounce any sacred text, except what ought to be used in obsequies to an ancestor; since he is on a level with a *'Súdra* before his new birth from the revealed scripture.

He is on a level with a *'Súdra*, because he is not qualified for reading the *Véda; nevertheless* he is not unentitled to respect. The brother for whom a ceremony is to be performed, must contribute to the charges of it; as is made evident by VRIHASPATI, "their elder brothers shall perform "those ceremonies out of the collected wealth of the father" (CXXXII). Why is it said, 'the ceremonies from that which is performed on the birth 'of a male?' for that is not the first holy rite. The father alone performing the ceremony attending prayers for conception (CXXXIV), a brother is not competent *to recite them*. The ceremony to obtain male offspring, and that of combining the wife's tresses, need only be performed once; and having been already fulfilled while the eldest brother was in the mother's womb, there is no occasion for repeating them.† By mentioning 'ceremonies from that performed on the birth of a male,' it is intimated, that a brother by a different mother is not competent, in the first instance, to perform that and the subsequent ceremonies.

CXXXIV.

Let the father himself perform the eight ceremonies which perfect *the second birth of a twice-born man*, like the ceremony on conception; or on failure of him, let another perform them in regular order.‡

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* Chap. II, v. 172, cited anonymously in this place.

† These ceremonies precede birth. 1st, *Garbhádhána*, a ceremony which should precede conception. 2d, *Punsavana*, a rite performed at the expiration of the third month of pregnancy. 3d, *Símantónnayana*, performed in the 4th, 6th, or 8th month of the first pregnancy. T.

‡ By these eight ceremonies I understand.—1st, *Játacarma;* a ceremony ordained on the birth of a male, before the section of the navel string, and which consists in making him taste clarified butter out of a golden spoon. 2d, *Námacarana;* ceremony on giving a name, performed on the 10th day after birth; or on the eleventh, twelfth, or even the hundred and first day. 3d, *Nishcramana;* carrying the child out of the house to see the moon, on the third lunar day of the third light fortnight from his birth; or to see the sun in the third or fourth month. 4th, *Annaprásana;* feeding the child with rice in the sixth or eighth month, or when he has cut teeth. 5th, *Chu'dácarana;* the ceremony of tonsure, performed in the second or third year after birth. 6th, *Upanayana;* investiture with the marks of the class, performed in the eighth year from the conception of a *Bráhmana;* but it may be anticipated in the fifth, or be delayed

An objection may be here suggested. The remark contained in the *Retnácara*, on the texts of NÁREDA, &c. does not seem accurate; the term there used does indeed occur in the text of NÁREDA (CXXVIII), but it neither expresses 'brothers for whom the ceremonies have been completed,' nor 'elder brothers.' This text might therefore be unexceptionably considered as relating to the ceremonies in general, including marriage. Hence all the brothers should contribute to defray the several ceremonies including marriage. This has been thought reasonable by VÁCHESPATI BHATTÁCHÁRYA. However it appears to be his opinion, that no ceremony can be legally performed for a younger brother before it has been performed for the elder. That point should be examined by a practised mind.

It should be he here observed, that, if a younger brother contract a marriage, while the elder has not yet taken a comfort, it is not a *legal* ceremony perfecting the class of that younger brother: the eldest must therefore contribute money to repeat that ceremony in a legal form; and the younger brother must perform penance. But the contribution is not ordained by the law for this case. Since all the texts contain the expression "whose investiture and other ceremonies have not been performed," and direct that those ceremonies shall be performed for such brothers; and since a marriage subsequent to one which was legal cannot be considered as the last perfect right, (*those ceremonies having been completed by the first contract;*) all the brothers shall not contribute to defray the second marriage of any one brother whose wife has deceased. He ought, however, to contract another marriage, to fulfil his duty; as directed by the following text, wherein 'twice-born' is merely illustrative, and relates to the four classes:

But let not a twice-born man remain a single instant excluded from the *four* orders.*

In the *Retnácara* the text of NÁREDA (CXXVII) is read, *bhrátrinám púrva sanscritaih*, "by those, among the brothers, for whom the ceremonies "have been performed" JÍMÚTAVÁHANA reads, *bhrátribhih púrva sanscritaih*, "by those brothers for whom the ceremonies have been performed." According to the opinion of those who consider the feminine as understood in the masculine terms of another text, "any of the brothers *or sisters*" (CXXVIII), the term "ceremonies" must signify all the rites, from that performed on the birth of a male to his investiture with the marks of his class; and *in the case of a sister*, it must signify marriage alone. According to other opinions, the rites, from that performed on the birth of a male to his investiture, must be considered as denoted by that term in every text. Since

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to the sixteenth year. 7th, *Sávitri;* the ceremony of investiture hallowed by the *Gáyatrí* which must not be delayed for a *Bráhmana* beyond the sixteenth year: it should be performed on the fourth day after the first investiture. 8th, *Samávartana*; ceremony on the return of the student from his preceptor's house. The whole number of ceremonies called *sanscára*, as expiating the sinful taint contracted in the mother's womb, and as effecting regeneration, in other words, as perfecting the class of a twice-born man, are ten. To the eight ceremonies now enumerated must be therefore added the ceremony which precedes conception (*garbh'ád'hána*), and marriage, which is the last of these sacraments. Rituals contain other ceremonies, two of which are mentioned in the text and in the preceding note, but these are not essential. T.

* If he have no wife living, he is no longer in the order of a married man. To continue in the order of a housekeeper he must therefore contract another marriage. T.

it is expressed in every text, that the charges shall be defrayed, "brothers" are mentioned indeterminately; where the contribution of money is ordained, that term comprehends a nephew whose father is dead, and other heirs; for, succeeding to the estate of his paternal grandfather, or other ancestor, he must contribute to the charges of the investiture or other ceremony performed for the son, as well as discharge the debts of that ancestor. But paternal uncles need not defray those ceremonies for a nephew, since the performance of them was a duty incumbent on his father, *not on their's.* Upon this subject VÁCHESPATI BHATTÁCHÁRYA says, 'a brother is the proper person 'to perform and *defray* those ceremonies *for a nephew,* if the paternal grand-'father be not living.' This is founded on the following text, and on the rule, that an exposition of law established in one case is applicable to others, unless there be good ground of exception.

CXXXV.

YÁJNYAWALCYA:—In the disposal of a girl, the father, the paternal grandfather, the brother, a kinsman, or the natural mother, shall be consulted in the order here specified: upon the death of the first, the right of giving away the damsel devolves on each of the others successively, provided they be of sound understanding.

This should be examined. The two acts are not similar; for, were they so, a mother would be likewise competent to perform the investiture and other ceremonies for her son. But, on failure of uterine kindred, brothers of the half blood and so forth, as far as learned priests (that is, relatives within the degree of *sapindas* and remoter kinsmen in the order of propinquity), must be deemed competent to perform those ceremonies, as common sense shows. The order of performing them is this: first, the rite on the birth of a male should be performed; next, the ceremony of giving a name, and so forth; and among persons for whom a ceremony is to be performed, it should be first done for the eldest, and last for the youngest: but the ceremony of boring the ears is no rite necessary to perfect *the twice-born man.* In respect of brothers by different mothers, there is no particular order to be observed. Such is the opinion of RAGHUNANDANA. To discuss this subject further, would be superfluous.

CXXXVI.

CÁTYÁYANA:—Effects which a kinsmen has embezzled, let not a co-heir use violence to make him restore; nor let a co-heir be obliged to make good what he had expended before partition.

The first hemistich relates to effects embezzled, at the time of partition, by a kinsman, that is, by a brother or other co-heir: this will be considered in another place.* The last part of the text is an answer to the question, whether a brother shall be obliged to make good, at the time of partition, what he had consumed during co-parcenary more than his co-heirs, in consequence of having a large family, or of his being subject to greater expense than the others? Consequently the sense is virtually this; the co-heirs shall only divide that which remains over and above what has been expended by any of the brethren, who live together and partake of the same food. Shall a brother be obliged to make good what he has expended for

* Chapter VI.

the nuptials of a daughter? the answer is, since all the co-heirs are interested in a duty fulfilled at the charge of the common estate, that money is virtually expended by all the parceners; therefore it shall not be made good. Nor shall that which has been disbursed for the enjoyment of a woman, be repaid; for the term use *or expenditure* comprehends fruition. If it only signified the act of swallowing, a co-heir would be bound to make good what he had previously expended for clothes or the like: but what he has embezzled, though not yet disbursed, must be made good. This will be explained in its place. All other property, which is partible, let the co-heirs divide. Partible property will be hereafter explained.

The mode of making a partition is declared in a text of MENU (LIII). The deducted allotment must be given according to age and virtue, as already mentioned *in a former chapter*. CHANDÉSWARA alleges a reading, *samavarnásu vá játáh*, instead of *samavarnásu yé játáh*. He considers sons produced by wives unequal in class as comprehended in the text (LIII) by the particle "or" (*vá*): if there be many sons, the portion of an eldest son is not supposed *due to more than one;* the deducted allotment shall only be given to the eldest of them all. By "many" is meant the number of three or more; for MENU has noticed the portion of a third son (XXXIX 2). But other lawyers hold, that the legislator, having propounded partition among brothers unequal in class, resumes the subject as it relates to brothers of the same class, for the sake of embellishing his book *by fully explaining the subjects treated.* The deduction shall be regulated in the mode already explained.

MISRA thus expounds a text of MENU, *cited in a former chapter* (LXXIII): 'it is not the act of their father; therefore no deduction of a 'twentieth part or the like is allowed in this case.' The meaning is, when property has been acquired by the labour of the brethren, the shares, in a distribution made by them, not by their father, shall be equal, without any disparity whatsoever: but if the partition be made by the father, he shall have either a double share, or half *of the whole;* it is therefore said, it is not the act of the father. Still it is directed by MENU, that brothers shall have equal shares (XXIX). Or it may signify, "it was not the wealth of the father," merely describing the nature of the property. In effect the additional share of an eldest son is forbidden in this case.

CXXXVII.

GÓTAMA, after premising property acquired by themselves:—Unlearned brethren must make an equal division *of it.*

The text of MENU, formerly cited (CVII), and as there expounded, is properly referred to the case of an indolent brother, for it is delivered by MENU when treating of Exertion *for gain.** It may, however, be taken in another sense, from the ambiguity of the terms; for there is need *of a precept on that subject.* This has been already explained at large. The following text *contains a precept* relative to property acquired by the labour of any one brother with supplies from the patrimony, but unaided by the labour of the rest.

CXXXVIII.

VASISHT'HA:—He among them, by whom property is acquired through his own sole labour, shall take a double share of it.†

* Chapter IX, v. 207. † Already inserted, v. 75.

It follows, that the rest shall have one share each. MISRA concurs in this inference. He remarks on the text of VYÁSA (CX), that "valour or the like" 'signifies generally any mode of acquisition, such as science and 'the rest; for the term "or the like" relates to the modes *of acquisition*, 'and is joined in this apposition to a term of the same nature. Is not 'property which has been gained by learning, valour, and the like, even 'with the use of the common stock, exempt from partition? and does not 'this contradict the rule above cited? No; for that relates to the particular 'exertions of learning, valour and the rest, as described by CÁTYÁYANA; but 'this relates to another case; the simple display of learning, not as there 'described.' (It is not improperly said, "the rule above cited;" for MISRA first considers property gained by learning.) According to MISRA, the rest of the co-heirs do not participate in wealth acquired by learning, *in the cases described by* CÁTYÁYANA, even though supplies be received from the joint estate. But this contradicts the opinion of JÍMÚTAVÁHANA and others. It will be discussed under the head of Wealth gained by Learning. But if the common stock be not used, they who make not the acquisition shall have no share. This will be also discussed in the same place. It may be here observed, that the additional share of an eldest son shall not be allowed in this case; because it appears to be only admitted, in the case of property left by the father, on account of the benefit received by him through *the birth of* his eldest son. It should not be objected, that, were it so, the word "all," in texts which ordain equal division, would be superfluous. Since he who makes the acquisition shall have a double share of wealth gained without a common exertion of all the parceners, equal partition does not take place.

Since the term "wives of the same class," in the text of MENU (LIII), is expressed in the plural number, is it not intimated that the distribution shall be made among the brothers produced by two or more wives who are equal in class, not among the mothers? and does not this contradict the rule of GÓTAMA (LIX)? No; for that rule directs partition to be made among brothers through the medium of their mothers, when the number of sons by the several mothers is equal, to avoid the trouble of distributing a very great number of shares. Accordingly that is declared in the texts of VRÍHASPATI (LXII and LXIII). If the sons born of one mother be equal in class with those born of others, that is, if all be of the same class; and if they be equal in number, that is, if the sons produced by each mother be equally numerous; then, all the mothers being equal in class, and having produced an equal number of sons, *such a mode of distribution may be adopted.* This is illustrative of a general meaning. The sons must be also supposed equal in good qualities; else, since the portion of the eldest son must be regulated by the degree of virtue *possessed by him*, a distribution could not be properly made through the medium of the mothers. In some instances the division may be made in right of the mothers, even though the degree of virtue be discriminated: but that is not at present noticed, because it is not pertinent, since it supposes the sons not numerous, and because it is encumbered with many wrong *interpretations*. But, if the number be unequal, though the class be the same, one mother having five sons, another four, and so on, the shares must be allotted to males (LXIII). The text is delivered to make it evident that the distribution may be originally made among males, even in the case of many sons produced by wives equal in class. Or the term used in the text signifies distribution regulated by the number of males: and that can only take place when they are of the same class; for unequal distribution will be directed among those who

belong to different tribes. Since co-heirs of various classes have not equal shares, the text of VISHNU expresses, "let sons of the same class receive equal shares, but give the best chattel with a deducted allotment to the first-born" (LIV). The deducted allotment of an eldest son has been explained.

By directing equal shares for sons produced by wives of the same class, it is intimated, that sons produced by wives of various tribes shall have unequal shares: what portions shall they receive?

CXXXIX.*

MENU:—This law, *which has preceded*, must be understood of a distribution among sons begotten on women of the same class: hear now the law concerning sons by several women of different classes.

2. If there be four wives of a *Bráhmana* in the direct order of the classes, and sons are produced by them all, this is the rule of partition among them:

3. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the *ring and other* ornaments, and the principal messuage shall be deducted from the inheritance and given to the *Bráhmana* son, together with a larger share by way of pre-eminence:

4. Let *the Bráhmana* take three shares of the residue; the son of the *Cshatriya* wife, two shares; the son of the *Vaisya* wife, a share and a half; and the son of the *'Súdra* wife may take one share.

"A distribution among sons begotten by the same father on women of "equal class;" "the law concerning sons produced by several women of "different classes:" such is the construction of the text. "The chief servant in husbandry;" the ploughman. Hence the ploughman, the bull, the riding horse, the ornaments, and the principal messuage shall be given to the son of the *Bráhmaní* wife; and one of his three shares is allotted to him by way of pre-eminence, because he is the principal and most excellent son. It is observed in the *Retnácara*, that the bull and the rest shall be given to him, if there be such *cattle and things belonging to the estate*. The term which occurs in the text being expounded "women of the same class," it alludes to partition among sons produced by several mothers of the same class, and to the deducted allotment which had preceded; and that follows from the term being used in the plural number. It is, however, merely illustrative, *and relates also to partition among the sons of one mother*. Several women of different classes are determinately meant; for one wife cannot be of different classes. Yet in fact several is not limited to the literal sense *of three or more*, but intends generally the case of two *or more* wives. The following texts propound a distribution made without any deducted allotment:

CXL.

MENU:—Or, *if no deduction be made*, let some person learned in the law divide the whole collected estate into ten parts, and make a legal distribution by this *following* rule:—

* The three principal texts have been already inserted at v. 60.

2. Let the son of the *Bráhmanì* take four parts; the son of the *Cshatriya*, three; let the son of the *Vaisya* have two parts; let the son of the `*Súdra* take a single part, *if he be virtuous.*

"The son of the *Bráhmanì;*" since the sense is not positively limited to one, the same rule is applicable if there be two or more sons of the *Bráhmanì*. The *Retnácara.*

In a word, the sons of the *Bráhmanì* shall each take three shares, or four. Consequently, if there be two sons by the *Bráhmanì* wife, three by the *Cshatriya*, two by the *Vaiśya* and four by the *Súdra*, in all eleven sons; the estate must be divided into nineteen or into thirty-three* shares, and six, or eight shares must be given to the two *Bráhmanas;* six or nine shares, to the three *Cshatriyas;* three or four shares, to the two *Vaisyas;* and four to the *Súdras*. The two forms of distribution, says JÍMÚTAVÁHANA, are regulated by some difference in the degree of virtue. The following text also notices the second mode of partition:

CXLI.

NÁREDA :—The shares diminish in the order of the classes for sons of an inferior tribe begotten on women legally married.

"Sons of an inferior tribe;" such as the *Cshatriya* and other sons of a *Bráhmana*. "Legally married;" lawfully espoused. "The shares diminish;" that is, the son of the *Bráhmanì* shall have four shares; the son produced by the *Cshatriya*, three shares, and so forth. The text is in some places read *varnántaréshu* sons of other classes, instead of *varnávaréshu* sons of an inferior tribe. Still the sense is the same. The *Retnácara.*

The *Súdra*, being lowest of all, has one share; the *Vaisya*, being next above him, shall have one more, that is, two shares; the *Cshatriya* shall have one more, or, altogether, three shares; and the *Bráhmana* shall have four; the shares are diminished by one in each step. Consequently, for each inferior tribe the allotment is one share less than for the next superior class: such is the real sense of the text. The other reading may be explained, 'for each different inferior class, the allotment is one share less than for the preceding.'

This distribution concerns the sons of a priest; but the same method may be observed in partition among the sons of a soldier or merchant. Consequently two shares, or three, for the son of the *Cshatriya* wife (CXXXIX and CXL), regard the legitimate son of a soldier, as well as the legitimate son of a priest. In like manner, there is no difficulty in considering the share and a half and two shares for the son of the *Vaisya*, as relating to the legitimate sons of a priest, of a soldier, or of a merchant. It should not be argued, on the other hand, that both forms of partition must be considered as relating to the legitimate sons of a priest only; because the text premises, "if there be four wives of a *Bráhmana*." YÁJNYAWALCYA propounds the second form of distribution for such cases: and, to satisfy the question arising on the first method, which may be applied to the legitimate sons of a soldier, it is proper so to extend its application.

* The number is erroneous in the original: it should be twenty-five. T.

CXLII.

YÁJNYAWALCYA :—The shares allotted to the sons of a *Bráhmana*, by wives of different tribes, shall be four, three, two, and one, in the order of the classes; to the sons of a *Cshatriya*, three, two, and one; to those of a *Vaisya*, two, and one.

When a *Bráhmana* has four wives, a *Cshatriya* three, or a *Vaisya* two, this is the form of partition among the sons born of them. The terms used in the text are explained in the *Retnácara*, sons of a *Bráhmana* born in different classes; that is, produced by women of various tribes. The same should be understood in the sequel of the text. The first mode of distribution takes place when all the sons are equally virtuous, or *equally* deficient in virtue; the last mode, when the son of the *Súdra* wife is alone deficient. But if the son of the *Súdra* be very deficient in virtue, the *Mahábhárata* directs the following distribution among the sons a *Cshatriya*, and among those of a *Vaisya* :—

CXLIII.

The *Mahábhárata* (BHISHMA addresses YUDHISHT'HIRA) :—For a *Cshatriya* two wives are ordained, O son of CURU ! or a third wife of the servile class may be taken, but that is not directed in holy writ :

2. The estate of the *Cshatriya* father must be divided into eight parts; and the son of the *Cshatriya* wife shall receive four such parts of his father's estate;

3. And he shall also take whatever implements of war belonged to his father: but the son of the *Vaisya* wife shall have three shares, and the son of the '*Súdra* one.

4. The '*Súdra* shall receive his share, if it be allotted to him by his father, but he is not entitled to claim any portion unless it be expressly given to him. One wife only shall be married by a *Vaisya*, O son of CURU !

5. Or a second wife of the servile class; but such a second marriage is not ordained in holy writ: his estate shall *however* be divided into five parts.

6. I will now propound the distribution of those shares between his two sons; four shares of the estate shall be taken by the son of the *Vaisya* wife;

7. But the fifth part shall belong to the son of the '*Súdra* : he shall receive that share, if it be allotted to him by his father; but he is not entitled to claim any portion, unless it be expressly given to him.

A similar mode of distribution should be established for the sons of a *Bráhmana* ; since the question arising on this point cannot otherwise be

satisfied. That distribution is as follows: the son of the *Bráhmaní* wife shall have five shares, the son of the *Cshatriya* four, the son of the *Vaisya* three, and the son of the *Súdra* one: the estate must be therefore divided into thirteen shares. This was also contemplated by NÁREDA (CXLI). However, the son of the *Súdra* has two shares less than the class next above him, merely because he is very deficient in virtue.

In the *Viváda Chintámeni* the verse concerning the *Vaisya* (CXLIII 5) is read *dwitíyà vá bhavét Súdra na tu drĭshtá trĭtiyacá* (or a second wife of the servile class may be *espoused by him*, but no third wife is *ever* seen), instead of *dwitíyá vá bhavét Súdra na tu drĭshántatah smrĭtá. Drĭshtánta* here signifies the *Véda:* the sense is, that if a third wife of the servile class, though unnoticed in holy writ, be married by a *Cshatriya*, her son may have such a share *as is mentioned*. The sense is the same in the subsequent verse (CXLIII 5). "The implements of war" are explained in the *Retnácara*, warlike weapons, as a scymitar and the like. The espousal of a *Súdra* is censured by the tenor of the preceding texts. MENU *expressly* reprehends such a marriage.

CXLIV.

MENU:—For the first marriage of the twice-born classes a woman of the same tribe is recommended; but for such as are impelled by inclination to marry again, women in the direct order of the classes are to be preferred;

2. A *Súdra* woman only must be the wife of a *Súdra*; she and a *Vaisya*, of a *Vaisya*; those two and a *Cshatriya*, of a *Cshatriya*; those three and a *Bráhmaní*, of a *Bráhmana*.

The particle "only" refers to every part of the sentence, "she," "those two," "those three;" the subsequent phrase being thus connected with the preceding, marriages must in no instance be contracted in the inverse order of the classes. "But for such as are impelled by inclination to marry again, wives in the direct order of the classes are to be preferred:" this is mentioned to show a venial offence, not absolute freedom from guilt.

JÍMÚTAVÁHANA.

"Wives in the direct order of the classes are to be preferred;" for a *Bráhmana* the most proper wife is a *Bráhmaní*; a *Cshatriya* wife is in some degree disapproved; a *Vaisya* is more censured; but a *Súdra* is much blamed. In this case women of the military and commercial classes are also pronounced to be censurable wives for a priest, not a *Súdra* alone; the same is also declared in respect of a soldier: how does it follow, that a *Súdra* wife of a *Cshatriya* has not been noticed by the *Véda?* The following texts resolve this question:—

CXLV.

MENU and VISHNU:—Men of the twice-born classes, who, through weakness of intellect, irregularly marry women of the lowest class, very soon degrade their families and progeny to the state of *Súdras*:

2. According to ATRI and to (GÓTAMA) the son of UTAT'HYA, he who *thus* marries a woman of the servile class, *if he be a priest*, is degraded instantly; according to SAUNACA, on the birth of a son, *if he be a warrior;* and *if he be a merchant*, on the birth of a son's son, according to BHRĬGU.

3. A *Bráhmana*, if he take a *'Súdra* to his bed, *as his first wife*, sinks to the regions of torment; if he beget a child by her, he loses even his priestly rank.

These texts are cited by JÍMÚTAVÁHANA, when treating of *marriages* in the direct order of the classes, with this preliminary observation; 'both legislators declare it a great offence for a 'twice-born man to marry a woman of the servile class.' He explains women of the lowest class, *Súdra* women. Consequently the preceding text of MENU pronounces it an offence for a priest to marry women of the military and commercial classes, and these texts notice the greater offence of marrying a woman of the servile tribe: the present texts (CXLV) do not propound the less offence of marrying women of the military or commercial classes, as well as the greater offence of marrying a woman of the servile tribe; for the term, "women of a low class," must signify *'Súdra* women; else it would disagree with the context, where it is said, that by such marriages men soon degrade their families and progeny to the state of *'Súdras*, for the son of a *Cshatriya* woman *by a priest* is acknowledged as a *Cshatriya*.

CXLVI.

Smrĭti :—Let men of mixed classes perform the several rites during purity and impurity like *those who belong to the same class with* their mothers.

Upon the opinion of those who consider them as *'Súdras*, it cannot be argued that there would be no disagreement with the context; for the contradiction of the subsequent texts (CXLV 2 and 3) could not be well reconciled, nor the inconsistency with the text (CXLVII) which introduces those precepts.

CXLVII.

MENU :—A woman of the servile class is not mentioned, even in the recital of any ancient story, as the *first* wife of a *Bráhmana* or of a *Cshatriya*, though in the greatest difficulty to find a suitable match.

Accordingly HÁRÍTA also passes a severe censure on those who marry women of the servile class.

CXLVIII.

HÁRÍTA :—No other is sacrilegious like the husband of a *'Súdra; for* that priest by whom she conceives shall perish.

This, coinciding with the texts of MENU and the rest, must relate to a *'Súdra* actually married *by a twice-born man*. JÍMÚTAVÁHANA.

CXLIX.

SANC'HA :—A *Bráhmanì*, *Cshatriya* and a *Vaisya* are pronounced *suitable wives* of a *Bráhmana*; a *Cshatriya* and a *Vaisya*, of a *Cshatriya*:

2. But a *Vaisya* is the only wife ordained for a *Vaisya*, and a *'Súdra* for a *'Súdra.*

Accordingly SANC'HA enumerates the legal wives for a man of twice-born class, without mentioning a *'Súdra* woman.

Consequently those evils follow the marriage of a *'Súdra*, not the mere procreation of children on a woman of that class; for it is remarked by JÍMÚTAVÁHANA, that 'these evils do not follow the procreation of a child 'on a woman of the servile class, who has not been espoused by the begetter; 'but the offence is venial, and a slight penance must be performed; as will be 'mentioned.'

CL.

YÁJNYAWALCYA:—What has been said of twice-born men taking wives of the servile class, is not approved by me, because the husband is himself born a second time *through the birth of a son.*

2. Three wives, in the direct order of the classes, *are ordained* for the *Bráhmana*; two and one for the *Cshatriya* and *Vaisya* respectively; and a woman of his own class for the *'Súdra.*

In the direct, not in the inverse order of the classes. The wives of a *Bráhmana*, *Cshatriya* and *Vaisya*, are respectively three, two, and one, in number. Some legislators have mentioned, as authorized by the *Véda*, the marriages of *Bráhmanas* and the rest with women of the servile class: that is not my opinion; I propound another exposition of the *Véda*. Such is the sense of the text. It therefore coincides with the observation, that such a marriage is not ordained in holy writ. However, YÁJNYAWALCYA does also recognize the marriage of a *Bráhmana* with *'Súdra* woman; else his former text (CXLII) would be irrelevant: and such a marriage with a *'Súdra* woman is only contracted through the impulse of inclination, but is not ordained by the *Véda*; for this coincides with the *Mahábhárata* (CXLIII).

CLI.

PAIT'HÍNASI:—Four wives may be espoused by a *Bráhmana*; and three, two, and one, by men of other classes *respectively.*

That is, three wives may be espoused by a *Cshatriya*, two by a *Vaisya*, and one by a *'Súdra.*

CLII.

SANC'HA and LIC'HITA:—The most suitable match for every tribe is a wife of the same class.* *Or*, four wives may be allowed to a priest in the order of the classes, three to a warrior, two to a merchant, and one to a man of the servile class.

Consequently marriage with a woman of the same class only, marriages of twice-born men with women of different classes except the *'Súdra*, and their marriages with women of various classes including the *'Súdra*, are still three practices, of which the last is less proper than the preceding. Such is the sense conveyed: it is mentioned incidentally; the practice is authorized

* An option has been already given at v. 149. Note by the compiler.

by the law, and a *Bráhmana* may, at his pleasure, take one, two, three, or four wives, for each of those modes *of acting* have been propounded. VISHNU successively declares the partition to be made when all those wives bear sons, and when any one of them is childless.

CLIII.

VISHNU:—ά The sons of a *Bráhmana*, who were produced by women of the four different classes, shall divide the paternal estate into ten parts, of which the son of the *Bráhmaní* shall take four shares; the son of the *Cshatriya*, three; the son of the *Vaisya*, two; and the son of the *'Súdra*, one. β' But if a *Bráhmana* leave three sons, and none by a *'Súdra* wife, they shall divide the estate into nine parts, and take their respective allotments of four, three, and two shares, in the order of the classes.

But if no woman of the commercial class have been taken in marriage, or if such a woman have been espoused, but prove barren, VISHNU also propounds the form of distribution for that case:

γ' If there be no son of the commercial class, let those of other tribes divide the estate into eight parts, and take respectively four shares, three, and one.

Let the priest take four shares, the warrior three, and the *'Súdra* one, in the same mode, and for the same reasons, which have been mentioned. He proceeds to the distribution made when there is no son by the *Cshatriya* wife.

δ' If there be no son of the military class, the estate shall be divided into seven parts, and the several allotments shall consist of four shares, of two, and of one. έ If there be no son of the sacerdotal class, the estate shall be divided into six parts, and three shares shall be allotted to the *Cshatriya*, two to the *Vaisya*, and one to the *'Súdra.*

Having propounded the distribution among three sons, he proceeds to declare the partition between two.

σ' Should a *Bráhmana* leave two sons, one a priest, the other a warrior, the priest shall take four shares of the estate divided into seven parts, and the warrior three. ζ' Should he leave a son of the sacerdotal, and one of the mercantile class, the *Bráhmana* shall receive four shares of the estate divided into six parts, and the son of the *Vaisya* two. ή Should he leave two sons, one a *Bráhmana*, the other a *'Súdra*, let them divide the estate into five parts, and let the *Bráhmana* receive four shares, and the *'Súdra* one. θ' Should a priest or a soldier leave two sons, one a *Cshatriya*, the other a *Vaisya*, let them divide the estate into five parts, and let the *Cshatriya* take three shares, and the *Vaisya* two. ί Should a priest or a

soldier leave two sons, one a *Cshatriya*, and the other a *'Súdra*, they shall divide the estate into four parts, and the *Cshatriya* shall receive three shares, and the *'Súdra* one. ιά Should a preist, a warrior, or a merchant, leave two sons, one a *Vaisya*, the other a *'Súdra*, they shall divide the estate into three parts, and the *Vaisya* shall receive two shares, and the *'Súdra* one.

VISHNU again declares perspicuously another form of distribution.

ιβ If there be two sons by the *Bráhmaní* wife, and one by the *'Súdra*, let the sons of the *Bráhmaní* take eight shares of the estate divided into nine parts, and the *'Súdra* one. ιγ' But if the sons of the *'Súdra* be two, and the offspring of the *Bráhmaní* one son, let the *Bráhmana* take four shares of the estate divided into six parts, and the sons of the *'Súdra* two. ιδ On this principle shares should be also distributed in other cases. An only son shall succeed to the whole estate of a *Bráhmana*, provided he were born of a *Bráhmaní*, *Cshatriya*, or *Vaisya* wife; to the estate of a *Cshatriya*, provided he were born of a *Cshatriya* or *Vaisya* wife; to the estate of a *Vaisya*, provided he were born of a *Vaisya* wife: a *'Súdra* succeeds to the estate of a *'Súdra*.

If a *Bráhmana* leave an only son by one of three wives, a *Bráhmaní* and the rest, that son, being a *Bráhmana*, a *Cshatriya*, or a *Vaisya*, shall succeed to the whole of his father's estate. In like manner, the only son of a *Cshatriya* by one of two wives, being either a *Cshatriya* or a *Vaisya*, shall succeed to the whole estate; and the only son of a *Vaisya*, provided that son be of the commercial class: but the only son of a *'Súdra* by a *'Súdra* wife shall succeed to his father's whole estate. The third wife of a *Cshatriya*, and the second wife of a *Vaisya*, are not here mentioned, because such marriages are not authorized by the *Véda*.

CLIV.

VASISHT'HA:—When a *Bráhmana* leaves sons of the sacerdotal, military and commercial classes, the son of the *Bráhmaní* shall take three shares; the son of the *Cshatriya*, two; and the rest shall share alike.

The *Retnácara* furnishes the following gloss on this text. "The rest" signifies the sons of the *Vaisya* wife. VISHNU and VASISHT'HA, thus propounding a different partition, must be reconciled upon the greater and less degrees of virtue which distinguish the parceners. Regularly they should receive allotments of four, three, and two shares in the order of the classes. The text is thus reconciled to the rule of VISHNU. It is applicable when the son of the *Vaisya* possesses few good qualities; and the distribution must be so made when no deducted allotment is given, for it coincides with the text of MENU (CXL).

CLV.

SANC'HA and LIC'HITA:—Sons produced by women of a different class *from the father*, receive shares of the heritage in the subduple proportion, following the order of the classes.

Consequently, should a *Bráhmana* have male issue by four wives *of various classes,* his estate must be divided into fifteen parts, and eight shares must be allotted to the *Bráhmana,* four to the *Cshatriya,* two to the *Vaisya,* and one to the *Súdra;* but if there be no son by a *Súdra* wife, it must be divided into fourteen parts, and distributed on the same principle in the order of the classes; or it may be divided into seven parts, allotting four shares to the *Bráhmana,* two to the *Cshatriya,* and one to the *Vaisya;* ultimately there is no difference: if there be no son of a *Cshatriya* wife, the estate should be divided into eleven lots, of which eight belong to the *Bráhmana,* two to the *Vaisya,* and one to the *Súdra:* if there be no son of a *Vaisya,* eight shares out of thirteen belong to the *Bráhmana,* four to the *Cshatriya,* and one to the *Súdra:* if there be no son of the *Bráhmaní* wife, the *Cshatriya* shall have four shares out of seven, the *Vaisya* two shares, and the *Súdra* one. The estate of a *Bráhmana* must be so distributed. Should a warrior leave three sons by three wives *of various classes,* the distribution is made by dividing the wealth into seven parts; or, if there be no son of a *Súdra* wife, by dividing it into six or into three shares; if there be no son of the commercial class, by dividing it into five lots: the wealth of a *Cshatriya* must be so distributed. Should a *Vaisya* leave two sons, his estate must be divided into three shares; the distribution among three sons has been stated above: *but* if a *Bráhmana* leave two sons, one a priest and the other a warrior, partition shall be made by dividing the estate into twelve, *into six, or into three* shares; or if one be a priest and the other a merchant, by dividing it into ten, or into five lots; or if one be a *Bráhmana* and the other a *Súdra,* by dividing it into nine parts: in the other cases the partition is similar to that of a *Cshatriya's* estate. Such is the sense conveyed by the text of SANC'HA and LIC'HITA; and it must be understood that this mode of distribution is adopted when the good qualities of the sons decline in the order of the classes. But some lawyers *think they* can maintain the following bad exposition: "Subduple" *they explain,* half *or other part* of a full share: he who has such an allotment, has a certain specific share of the whole; and the text may consequently coincide with that of NÁREDA (CXLI). The following text concerns the case where superior virtue is found in the inverse order of the classes:

CLVI.

VRIHASPATI:—The son of the *Cshatriya* wife, being elder by birth and superior in good qualities, shall have an equal share with the son of the *Bráhmaní;* and such a son of a *Vaisya* wife shall have an equal share with the son of the *Cshatriya.*

The son of the *Cshatriya* shall have an equal share with the priest, if he be senior by birth, and superior in good qualities: such is the construction of one part of the sentence. If the son of the *Vaisya* be also senior by birth and superior in virtue, he shall have an equal share with the *Cshatriya.* Is he here supposed senior by birth and superior in good qualities to the son

of the *Cshatriya*, or to the son of the *Bráhmanì?* On the first supposition, if he were also senior by birth and superior in good qualities to the son of the *Bráhmaní*, he would have an equal share with that son. The second supposition is not reasonable; for it would be unnoticed that he shall have an equal share with the son of the *Cshatriya*, if he be senior to him by birth and superior in good qualities; now he ought to have an equal share with him in right of that seniority alone, without being also senior by birth and superior in good qualities to the son of the *Bráhmanì*. To this it is answered, he shall have an equal share with the son of the *Cshatriyá*, if he be senior to him by birth and superior in good qualities; but if he be senior to the son of the *Bráhmanì*, there is no difference. For sons take one additional share for each gradation, in right of superior class; and if *a son of* the next inferior class be superior in respect of age and good qualities, then, mutual equality being restored, they shall have equal shares; but if the son of a class two degrees lower be senior by age and superior in virtue, then, reducing the great superiority of class, and equality arises with the intermediate tribe; for the parity is only admitted in right of superiority by age and good qualities. If the sons of the *Cshatriya* and *Vaisya* be both superior in age and virtue to the son of the *Bráhmanì*, but the *Cshatriya* be inferior to the *Vaisya*, their claim is equal to that of the *Bráhmana;* if the *Vaisya* surpass the *Cshatriya*, at the same time that both are inferior to the *Bráhmana*, his claim must be affirmed equal to that of the *Cshatriya*. It would be a great disparity, that one who was inferior *in good qualities* to the *Cshatriya* should receive a great allotment, and that one who surpassed him should receive less. That is now removed by the text cited.

CLVII.

BAUDHÁYANA:—A son by a woman of equal class, and a virtuous son by a wife of a class one degree lower *than her husband*, shall take the portion of an eldest child: a virtuous son is the supporter of the rest.

If he only surpass in virtue, he shall take the portion of an eldest son, that is, a deducted allotment; if he be superior both by age and virtue, he has an equal claim with the class next above him, as also mentioned by VRÍHASPATI; for the *Cshatriya* and the rest cannot have an equal share with the *Bráhmana*, unless they receive the portion of an eldest son. JÍMÚTAVÁHANA observes, 'it is thus shown, that the son of a *Súdra* wife 'may in similar circumstances be entitled to an equal share with the '*Vaisya*.' The portion of an eldest son, mentioned by VRÍHASPATI (XLV), may be argued as applicable even to this case: but the discussion of this point would needlessly swell the volume.

CLVIII.

GÓTAMA:—The son of a *Bráhmana* by a *Cshatriya* wife, being endued with good qualities, shall have an equal share with the first born, excepting the *deducted* portion of an eldest son.

The *Retnácara* furnishes this gloss: excepting the bull and the rest of the portion deducted for an eldest son; that is, no deducted allotment, such as the portion of an eldest son, shall be given to him. Consequently the meaning is, that he shall have an equal share with the son of the *Bráhmanì*.

CLIX.

GÓTAMA :—If there be sons *similarly circumstanced and* produced by a *Cshatriya*, and a *Vaisya*, as the *virtuous* Cshatriya *would receive an equal* share with the son of the *Bráhmaní*, so *shall the son of the* Vaisya *have* an equal share with the son of the *Cshatriya* ; and *so likewise* if they be sons of a *Cshatriya* father.

The text is thus explained in the *Retnácara*: if the *Bráhmana* leave no son by his *Bráhmaní* wife, but leave two sons *of other tribes*, one by a *Cshatriya*, the other by a *Vaisya*, the son of the *Vaisya*, being virtuous, shall have an equal share with the son of the *Cshatriya*, who is his junior and is deficient in virtue, but without the deducted portion of an eldest son, in like manner as the son of the *Cshatriya* has, in similar circumstances, an equal share with the son of the *Bráhmaní*. Consequently the share of the son born of the *Bráhmaní*, as mentioned in the preceding text, is *merely* an example. "And *so likewise*, if *they be sons* of a *Cshatriya* father;" if there be two sons of a *Cshatriya*, one by a *Cshatriya* woman, the other by a *Vaisya* and they be similarly circumstanced, the rule of partition is the same.

CLX.

GÓTAMA :—The very same rule exists in regard to two sons of a *Vaisya*, one by a *Vaisya* woman, the other by a *Súdra*.

"The very same rule" alludes to that which has been delivered by BAUDHÁYANA; it declares a title to the portion of an eldest child: if the son of a woman equal in class be junior, and also deficient in virtue, while another younger brother is virtuous, they shall have equal shares.

The *Retnácara*.

That is questionable; for VRĬHASPATI ordains equal participation then only when the son of inferior birth is superior in age and good qualities: it seems advisable to explain the terms *of this text* separately, "elder by birth, and endued with good qualities;" but why should that be done when the same *conclusion* may be obtained by other means? The difficulty is removed by considering the phrase in the text of GÓTAMA, "being endued with good qualities," as a mere instance which includes the notion of one senior in age.

By the expression "a hundred sons," in the text of MENU (LXVI), this meaning is conveyed : if a *Súdra* have even a hundred sons, allotments are not dissimilar, as they are when a *Bráhmana* leaves four sons. Consequently seniority in right of class does not exist in this case: but what should bar the claim of seniority in right of primogeniture and good qualities? For there is no argument to such an effect, and MENU in fact mentions, that a *Súdra* can have no wife of a different class, as a reason for equal partition; else it would be impertinent to insert a precept concerning marriage, that a *Súdra* alone can have no other wife but one of his own class, under the title of Inheritance. Accordingly the maxim delivered by GÓTAMA (CLX), that the son of a *Vaisya* by a *Súdra* woman shall, if virtuous, have an equal share with the son of the *Vaisya* wife, is pertinent. The virtuous *Súdra* shall not receive an additional allotment in token of respect, if a superior brother be living: it is proper to affirm,

that he can only have such a share with a brother of equal class. Thus some lawyers expound the law, and Srí Críshna Tercálancára concurs in that opinion.—But Váchespati Bhattácharya holds, that Menu enjoins equal partition *among the sons of a Súdra*, merely to deny the portion of an eldest son in right of primogeniture alone, not to deny such an allotment in right of pre-eminent virtue; for Vrihaspati propounds the reason of it without discriminating classes, "he is venerable like their father" (XLV.) Cullúcabhatta, Jímútaváhana, and other authors, deny the deducted allotment in right of primogeniture, but do not notice the allotment for pre-eminent virtue *in the case of a Súdra.*

The text, which denies any other wife to a *Súdra* but a woman of his own class, may be thus considered: "no other wife is ordained for a "*Súdra;*" that is, no other is suggested by the *Véda:* it must not be asked, if a *Súdra*, impelled by inclination, should nevertheless marry a woman of the sacerdotal or other superior class, as a *Bráhmana* marries a woman of the servile class, and a son be born of that marriage, what shall be his share? Marriages from inclination, or in obedience to the law, are authorized in the direct order of the classes, but on no account in the inverse order. Consequently, a marriage not authorized either by recorded or by traditional revelation is reprehensible; and the son of such a marriage shall have no share, as will be hereafter mentioned under the head of Exclusion from Inheritance. The exposition of Cullúcabhatta and the rest is accurate.

CLXI.

Vrihaspati:—Land received *as the reward of sacred literature*, must never be given to the son of the *Cshatriya* or other wife of inferior class; even if his father give it to him, the son of the *Bráhmaní* may nevertheless resume it after his father's death.

CLXII.

Vriddha Menu:—The sons of the *Bráhmaní* shall take the land which descends as a holy heritage; but all the sons by women of twice-born classes shall succeed to the house and field successively inherited from ancestors.

'Land received *as the reward of sacred literature*, is the same with 'land descending as a holy heritage.' This remark of Jímútaváhana is founded on the coincidence of the text of Vrihaspati. He thus explains the term used in the text: "holy" alludes to the *Véda*, and signifies the study of it, and knowledge of its sense, by which gifts are obtained. *Neither should this be given to a son of inferior birth*, nor the land which has been obtained through *the* pious veneration *of the giver*, as suggested by Menu; for that is in the nature of a pious oblation.

CLXIII.

Menu:—To *Bráhmanas* returned from the mansions of their preceptors, let him *(the king)* show due respect; for that is called a precious unperishable gem, deposited by kings with the sacerdotal class.

'Or, this is forbidden by the one; that by the other. All land belonging to a priest is not a holy heritage: for the text recognizes the claim of 'all sons by women of twice-born classes to the field inherited from 'ancestors, and only excludes the son of a *Súdra* woman.'

A distinction is admitted between pious oblations and simple gifts. A donation consists in relinquishment, vesting property in another, after devesting the right of the owner; and that is characterized by the words "I give," or others to that effect: but a pious oblation consists in a grant for use, and is characterized by terms of humble salutation; and a thing which is offered as a pious oblation, must not be appropriated by the giver himself; for the contrary practice occurs in oblation to deities. If the offering be made to inanimate deities, after allowing a period for *supposed* enjoyment *by the idol*, such as one day and night, it must be given to *Bráhmanas:* but if the offering be made to the *Bráhmana* himself, considered as a divinity, it is long enjoyed by him. Such, it is said, is JIMÚTAVÁHANA's opinion: but that is futile; for, were it true, the property would escheat to the king, after the death of the priest in honour of whom the offering was made: his sons would therefore be unentitled to the succession; and they could not have *even* a contested claim.

Is it not the purpose of a pious oblation, that it shall be enjoyed by him in honour of whom the offering is made? Now that is attained by a single act of fruition; for it is a rule, that the intention of the law, once fulfilled, is completely answered: hence, may not land be resumed by the king on a subsequent day? It should not be objected, that, were it so, why should he not resume it for his own benefit? since the law permits consecrated things to be given to no other, he ought to deliver the offering to a priest; it is therefore improper to resume it for his own benefit. Nor should it be objected, that, because the same person is in this case the priest and the *supposed* divinity, he is only entitled to long possession. Were it so, the right of the priest's son to enjoy it after his demise, as his father's representative, would be contested. Nor should it be objected, that, the priest in honour of whom the oblation was made becoming by death similar to an inanimate deity, the king may deliver it to any priest whomsoever. He and his issue are authorized to enjoy it, as land given to a daughter for her subsistence is enjoyed by her and her issue.

To the question proposed the answer is, why should it not be acknowledged as a gift, for the term demonstrative of respect is irrelevant in any other sense but that of donation? In fact, when provision is made for the maintenance of a daughter, that being given for the support of her and her issue, it is also enjoyed by her descendants *after her demise.* But this case is not similar, for the pious oblation is made in honour of one person alone. To this some reply, acceptance of a thing relinquished, with a view to the merit arising from that relinquishment, constitutes the receipt *of a present;* the relinquishment of a thing with a view to the enjoyment of it *by another person*, whence merit shall accrue *to the offerer*, is an act demonstrating pious veneration: hence relinquishment only is denoted by the respectful term *with which the oblation is presented;* it does not extend so far as to vest property in the other. The fourth case only denoting the purpose of allowing enjoyment to the man in honour of whom the oblation is to be made, he is not donee *as usually signified by the dative case;* but that case is *here* used under another rule. What is offered as a pious oblation, is as it were unowned property; but, being once enjoyed,

the possessor gains a title by occupancy, and therefore it shall not be taken by any other person: this is established upon the consequence of the act. But after the demise of the grantee, it shall be enjoyed by his descendants, and no others.

'Or this is forbidden by the one;' from this land, received as a pious oblation, *the sons of inferior birth are* excluded by the one, namely, by MENU (CLXII and CLXIII); from land received as a present, they are excluded by the other, namely, by VRĬHASPATI. The sense (in the gloss on v. CLXII) is literal; for the term (*bráhman*) is explained in the Dictionary of AMERA, *The Védas*, abstract essence, devotion, GOD, BRAHMÁ, Priest, Lord of created beings. The commentator obviates the supposition that 'holy heritage' may intend *generally* the heritage of a *Bráhmana*, by adding, 'all land belonging to a priest is not a holy heritage.' For the text of MENU (CXLII) declares the general right of all *sons*, whether *Bráhmanas*, *Cshatriyas*, or *Vaisyas*, to succeed to the land belonging to a *Bráhmana;* that text being thus explained, the *Bráhmana*, *Cshatriya*, and *Vaisya*, shall succeed to the house which has successively descended from the paternal grandfather to the father, and from him to his sons. It should not be affirmed, that this text propounds the right of a son to succeed to the property belonging to a *Bráhmana*, *Cshatriya*, and *Vaisya* respectively. The property of a *Bráhmana* alone is premised in the first part of that text (CLXII); and the precept that twice-born men shall succeed to their fathers would be unmeaning, since it must be also affirmed, that the son of a *Súdra* man inherits land appertaining to his own father; but a *Súdra* is alone excepted in that text. In proof of this the following verse is cited by JÍMÚTAVÁHANA :—

CLXIV.

VRĬHASPATI:—The son of any twice-born man by a woman of the servile class is not entitled to partake of his landed property; he who is born in an equal class, shall take the whole: thus is the law settled.

Begotten on a woman of equal class, or born in the same class with his father. Land being mentioned generally, it appears that the son of the *Súdra* wife shall not participate therein, whether it have been received in a present or otherwise. Land not received in a present, is that which is acquired by purchase or the like. JÍMÚTAVÁHANA concurs in that exposition; but it must be remembered, that the sons of the *Cshatriya* and *Vaisya* wives shall have a share of the land which has been acquired by purchase and the like.

The phrase expounded "land which descends as a holy heritage," may be explained, land accruing by gift *on some account* peculiar to a priest; it therefore comprehends the assisting to sacrifice, teaching the *Védas*, and receiving gifts *from a pure-handed giver*. The delivery of land acquired by purchase is not peculiar to a *Bráhmana*, but concerns all classes. The delivery of land acquired by the acceptance of a gift, concerns a *Bráhmana;* for the law declares "A *Bráhmana* may acquire wealth by assisting to sacrifice, by teaching the *Védas*, and by receiving presents;" and the *means* of subsistence prescribed to the *Bráhmana* are forbidden to others.

MENU:—A man of the lowest class, who through coveteousness lives by the acts of the highest, let the king strip of all his wealth, and instantly banish.

A *Cshatriya* sometimes practises mendicity on failure of all other means of subsistence, and merely to preserve life; but it is not possible that his sons should thereby gain riches. CHANDÉSWARA also explains the term used in the text (CLXII), land gained by assisting to sacrifice and the like. What is received as a pious oblation, is also comprehended in the same term.

Others argue from the text admitting the title of the *Cshatriya* and *Vaisya* to land inherited by ancestors without any specified exception, that the sons of the *Cshatriya* and *Vaisya* wives succeed to land which was originally received in a present by the paternal grandfather or remoter ancestor, and had devolved on the father in right of affinity. Accordingly land which is acquired by the father, through the acceptance of a present, shall belong to the son of the *Bráhmaní*, not to the son of the *Cshatriya* or other inferior wife; as is observed by JÍMÚTAVAHANA. How then do the sons of the *Cshatriya* and *Vaisya* succeed to land which was acquired by purchase? Because there is no prohibition: "all the sons of women of twice-born classes, &c." is merely a repetition: the former part of the text contains the direct precept. A secondary sense should not therefore be admitted; for it is weaker than the primary sense. The last part of the text of VRÍHASPATI (CLXI), "even if his father give it to him, &c.," supposes partition made by the father. Therefore the son of the *Cshatriya*, or other inferior wife, cannot by any means have property, founded on consanguinity, in land which was gained by modes of acquisition peculiar to a priest. Then, must it not be considered as a waif? Not so; for it must be affirmed that the father's property was not devested, else it would not be said that "the son of the *Bráhmaní* may resume it after his father's decease;" for, otherwise, even a stranger might seize it. If his father give it to him out-right for the sake of the merit *accruing* from gifts, or for protection, or through favour, what shall be the consequence? It becomes the absolute property of the *Cshatriya*, or other inferior son; for gift operates the devesture of the former owner's property; and if none vested in another owner, it would be a waif. It is not reasonable to say that property is not in this case devested by donation, for no limitation is on any account admitted to the valid gift of an owner who is not disabled by insanity or the like. Thus some expound the law.

CLXV.

DÉVALA:—A *Nisháda*, being the only son of a *Bráhmana*, shall have a third part of his estate; two shares shall be taken by the kinsman, remote or near, who performs the obsequies for the deceased.

2. On failure of kinsmen, those shares devolve on the preceptor, or on the pupil, who performs the obsequies; in the utmost difficulty *to find an heir*, let those shares be allotted to any person sprung from the same original stock.

A *Nisháda* is born from a *Bráhmana* on a *Súdra* wife, as mentioned under the title of Mixed Classes.* The whole estate being divided into three parts, he shall take one part, and *the other* two belong to the near kinsman connected by the funeral cake; or, on failure of him, to the remoter kinsman. The distinction between near and remote kinsmen will be explained. It may be thus elucidated: a near kinsman, connected by the funeral cake, is a father, *or his descendant*, and so forth; and the remoter kinsman is the

* MENU. Chapter X. v. 8.

grandfather's grandfather, and the rest. He must be of the same class with the deceased, else he would not be preferable to the son. On failure of remote kindred, the preceptor succeeds; he alone performs the obsequies, and celebrates the *śráddha*. On failure of him, the pupil. In the utmost difficulty, on failure of all heirs from the near kinsman to the pupil, let those shares be given to any person sprung from the same original stock with the father of the *Nishída*. The *Retnácara*, JÍMÚTAVÁHANA, and the rest concur in this exposition; the *Párijáta* adds, this concerns a virtuous *Nishída*. The object of that remark is to remove the apparent inconsistency with the following text:—

CLXVI.

MENU:—The son of a *Bráhmana*, a *Cshatriya*, or a *Vaisya*, by a woman of the servile class, shall inherit no part of the estate, *unless he be virtuous ; nor jointly with other son, unless his mother was lawfully married :* whatever his father may give him, let that be his own.

Consequently this text of MENU relates to the vicious son of a *Súdra* woman. But it is proper to consider it as only applicable when there is a son of a twice-born class; and it thus coincides with the text of the *Mahábhárata* above cited (CXLIII 4): and on this construction the son of a *Súdra* wife has a specific portion then only when partition is made by his father; but after his father's demise, he is excluded from participation, if he have a twice-born brother; if there be none such, he shall take a third part: there is no difficulty on this interpretation. Accordingly MENU, having declared partition among sons of the four classes, and, in answer to the question, whether a greater portion may be given to the son of the *Súdra*, on account of his filial piety or the like, when partition is made by the father? having denied that greater portion (CLXVII), proceeds to deny him even the tenth part when partition is made after the death of the father (CLXVI.)

CLXVII.

MENU:—But, whether the *Bráhmana* have sons, or have no sons, *by wives of the three first classes*, no more than a tenth part must be given to the son of a *Súdra*.

This tenth part is ordained when there are four sons of the four different classes; for it corresponds with a former text (CXL). In like manner it is reasonable that a *Súdra* son should receive, in right of a certain degree of virtue, one share of the estate divided into seven parts and a half; for that coincides with another text (CXXXIX 4). Never is a tenth part only given to the son of a *Súdra* wife, when there is no son by the *Bráhmaní*; for that would contradict the text of VISHNU (CLIII). Again; the prohibition contained in a text of VRĬHASPATI (CLXIV) concerns a *Bráhmana*, and relates to partition by a father. Many different rules being laid down according to the difference of class, but this containing no specified limitation, land cannot be properly included in the third part which is received by the son of a *Súdra* having no brother *of another class*. As for the supposition that the text of MENU (CLXVI) relates solely

to the son of a *Súdra* woman not lawfully married, it is erroneous; for the *Mahábhárata* declares, that even the son of a *Súdra*, lawfully married, is not entitled to claim any portion *unless it be given by his father* (CXLIII 4). How can the expression, "whether the *Bráhmana* have sons or have no sons," be justified? for VISHNU* authorizes a greater allotment than a tenth part, if he have no son *by wives of the three first classes*. A tenth part here intends the share prescribed for *a son of* that class, as abovementioned: hence, if the priest have no *other* sons, a third part or the like, to be substituted in place of the tenth part, *shall be allotted* to the son by the *Súdra*. Thus some *authors* expound the law.

CHANDÉSWARA, MISRA, CULLÚCABHATTA, VIJNYANÉSWARA, and the rest, explain the text of MENU (CLXVII), whether the priest have sons by wives of twice-born classes, or have no such sons. LACSHMÍDHARA remarks, if the father indulgently give any thing to his son by a *Súdra* woman, he shall not give more than a tenth part. According to this opinion, says CHANDÉSWARA, the phrase "a son by a woman of the servile class shall inherit no part of the estate," must signify that he shall have no part of the inheritance unless it be given to him by his father. The gloss on both lines expresses, 'if the father give any thing to his son by a *Súdra*;' it is not distinguished whether a share or an indulgent gift be meant: it must therefore be understood as intending a share; for, in the case of indulgent gifts to other sons, no specific sum is ordained: it is easy to establish the coincidence of this text *with others*, by the equality of his regular share; and it is inserted in MENU's code, after premising the allotment of a share. To reconcile the apparent contradiction of saying, that "a son by a woman of the servile class shall inherit no part of the estate," while it is mentioned both before and after this text, that he shall receive such part of the estate as is allotted to him by his father, HELÁYUDHA and the *Párijáta* supply the text with the words "unless given to him by his father." Participation is forbidden by the first sentence (CLXVI), alluding to a son very deficient in good qualities, and born of a *Súdra* woman lawfully married; it is forbidden by the second sentence, alluding to a son deficient in good qualities, and born of a *Súdra* woman not lawfully married. Hence, "whatever his father may give him, let that be his own;" meaning that which his father may give him through favour, whether it be less or more than a tenth part. But a father, who has no *other* son, must give a third part of the remainder, after deducting his own allotment, to a virtuous son by a *Súdra* woman lawfully married, and he shall take the residue for himself. The very same principle should be admitted in partition made after the death of the father. JÍMÚTAVÁHANA considers the text of MENU (CLXVII) as forbidding the further participation of one who has already received a tenth part through his father's indulgence. VIJNYÁNÉSWARA delivers a similar exposition. JITÉNDRIYA expounds both texts as follows: 'however great his father's partiality, he shall have no other portion than a tenth part.' According to his interpretation, the text, "no more than a tenth part must be given" (CLXVII), appears to relate to what is given through favour. But CULLÚCABHATTA reconciles the apparent contradiction in the texts of MENU (CLXVI and CLXVII), by different cases according to the degree of virtue, and according as the mother was, or was not, lawfully married.

* I find no text of VISHNU to that effect. Perhaps it may be an error of the transcriber writing VISHNU for DEVALA. T.

CLXVIII.

VRĬHASPATI :—The virtuous and obedient son born of a *Súdra* woman unto a man who leaves no *legitimate* offspring, shall take a *provision for his* maintenance, and the kinsmen shall inherit the remainder of the estate.

'This, says CHANDÉSWARA, relates to the son of a woman not lawfully married ;' for the subject is an unmarried woman. Else it would contradict the text of DÉVALA above cited (CLXV 1).

CLXIX.

GÓTAMA :—A son by a *Súdra* woman, born unto a man who leaves no *legitimate* offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance.

If he be strictly obedient like an apprentice, then shall the son of a *Súdra* woman receive a provision for his maintenance, out of the property of his father, who leaves no legitimate issue. "Apprentice" signifies a pupil. The author of the *Retnácara* has this exposition: 'the son begotten on a '*Súdra* woman not lawfully married, by a man belonging to one of the three 'first classes, who leaves no son by a woman of a twice-born class, shall 'receive a provision for his maintenance, (that is, some trifle as a stock 'whereon he may earn a livelihood by agriculture or the like,) provided he 'be strictly obedient, or show due respect, like a pupil: and whatever had 'been given to him by his father must also be delivered, as ordained in the 'following text.'

CLXX.

SANC'HA and LIC'HITA :—A son by a *Súdra* woman does not succeed to the paternal estate ; whatever his father gave him, that alone shall be his share: but let the father also give him a bull and a cow, some black iron, and *any* black grain excepting *tila*.

CHANDÉSWARA also expounds this text as in effect relating to the son of an unmarried *Súdra*. The text of MENU (CLXVII), as some lawyers remark, may be also expounded as relating to the same subject.

CLXXI.

GÓTAMA :—Sons produced by women in the inverse order of the classes, shall have a similar allotment to that of the son produced by a woman of the servile class.

A son produced by a woman of another class shall have a mere provision for his maintenance, like one produced by a woman of the servile class, if he be strictly obedient to his parent, as a pupil to his preceptor.

CHANDÉSWARA.

'Other class' intends mixed classes. This is grounded on the text which expresses, "All children produced by illegal connexions, are declared to have the same duties with those of the servile class." But a *Múrddhábhishictá* and the rest are not treated as women of the servile class. In another place the same commentator delivers this gloss : 'to sons produced

by women in the inverse classes, a subsistence shall be allotted in the same manner in which it is assigned to the son of a *Súdra*, provided they be strictly obedient *to their parents*.' A woman married in the inverse order of the classes is one who is of a class superior to that of her husband, or one who has been espoused by him before another wife of a class superior to her own, a *Cshatriya* before a *Bráhmaní*. MISRA says, 'a son begotten by 'a *Súdra* or other man of inferior class, on a *Vaisya* or other woman of 'superior class, shall receive the means of livelihood; that is, stock for 'agriculture and the like, such as a plough, a plough-share and so forth.' VISHNU propounds the share of a virtuous son begotten by a *Cshatriya* or *Vaisya* on a *Súdra* lawfully married.

CLXXII.

VISHNU:—A *Súdra*, being the only son of a twice-born man, shall take half his father's estate; the second half shall be appropriated in the same manner with the estate of one who leaves no male issue.

On this text it is remarked in the *Retnácara*, that a *Cshatriya* or *Vaisya* is here intended by the term "twice-born man," with an exception to the *Bráhmana*; 'for DÉVALA ordains the third part for the son of a priest by a woman of the servile class' (CLXV). It might be reconciled by referring the texts to the cases of a virtuous son, and of one deficient in virtue. The ample discussion of this subject would swell the volume unnecessarily; since the marriage of a woman unequal in class is forbidden in the *Cali*-age.

CLXXIII.

Vrihat Náredíya puráná:—Undertaking sea voyages *to circumnavigate the ocean*; the carrying of a water-pot *by a house-holder*; the marriage of twice-born men with damsels unequal in class:

Premising these and other practices, it adds,

The wise have declared, that these practices must be avoided in the *Cali*-age.

"Undertaking sea voyages;" circumnavigating the ocean.—"The carrying of a water-pot;" the carrying of it by a house-holder, as directed in ancient law, "Two sacerdotal threads must be worn, and a water-pot full of water must be carried." The learned so expound the text.

Aditya puráná:—The marriage of twice-born men with damsels not of the same class; the slaughter, in a religious war, of *Bráhmanas*, who are assailants with intent to kill:

Premising these and other parts of law, it proceeds,

These *parts of ancient law* were abrogated by wise legislators, as the cases arose at the beginning of the *Cali*-age, with an intent of securing mankind from evil:

The injunctions of infallible legislators are of equal authority with holy writ.

Does it not appear from the expression, "abrogated by wise legislators, as the cases arose," that the prohibition was not suggested by the scripture;

and is it not consequently improper? Therefore it is added, "the injunctions of infallible legislators, &c." The term *translated* "*injunction,*" *literally* signifies promise; for, amongst other senses, AMERA states the term (*samaya*) as synonymous with *samvit*, which he explains a promise or contract. "Infallible *legislators*" are such as are free from all defects. These defects are, natural ignorance, through which, *for example*, the Ganges may be mistaken for a vulgar stream; inadvertency, through which a man may err in regard to the existence of a thing, even though it lay before him; wilful deceit, as when he affirms that a thing is not, though it really be; and weakness of organs, which prevents his clear perception of small objects. The words of a man free from these defects must be respected like holy writ; for, not proceeding from a fallible man, they are similar to the precepts of the *Véda*.

CLXXIV.

YÁJNYAWALCYA:—A son begotten by a man of the servile class on his female slave, may receive a share by his father's choice; or, after the death of the father, the brethren shall allot him half a share.

"By his father's choice," that is, by the will of his father, he may obtain a share in the distribution of the estate: this relates to partition made by the father. It is hereby intimated, that a share must necessarily be given to sons and other descendants of a wife equal in class. The son of a *Súdra* by a female slave, or other *Súdra* woman not lawfully married, shall, with his father's consent, have an equal share with other sons.

JÍMÚTAVÁHANA.

Consequently, this is also intimated; if the father said, "let an equal share be given to this son," then the *other* sons shall give him an equal allotment when partition takes place. After the death of the father, *if no such will had been declared*, the brethren, born of a wife legally married, shall allot him half a share; that is, half of such share as would have been assigned had his mother been legally married. Consequently a son by a female slave, not superior in class to her *Súdra* master, shall obtain the moiety of a full share. Such is the opinion delivered in the *Mitácshará* and *Retnácara*. The same legislator propounds the rule when there is no son by a woman lawfully married.

CLXXV.

YÁJNYAWALCYA:—Should he have no brother, he shall take the whole, unless there be a daughter's son.

If there be no son by a woman lawfully married, nor a daughter's son, the son of a female slave shall take the whole estate of the *Súdra* father. Such is the exposition delivered in the *Retnácara*. MISRA explains the text similarly. SÚLAPÁNI, RAGHUNANDANA and the rest expound "a share" (CLXXIV), an equal allotment with the rest of the brethren. It is consequently intimated, that an unequal distribution, unauthorized by the law, shall not be made among the sons of a woman legally married. But if there be a daughter's son, then, since he is a legitimate descendant, and since the son of a female slave is produced by a woman not legally married, it is proper they should have equal shares. Such is the opinion of RAGHUNANDANA; and JÍMÚTAVÁHANA delivers a similar exposition.

CLXXVI.

MENU:—A son begotten by a man of the servile class on his female slave, or on the female slave of his male slave, may take a share of the heritage, if permitted: thus is the law established.

"On the female slave of his male slave;" on the female slave of his servant. The *Calpateru*.

CULLÚCABHATTA has a similar gloss. But CHANDÉSWARA explains "his female slave," one who falls within the description of slaves made captive under a standard and the rest;* "the female slave of a male slave," his female slave of such a description, on whom a son is begotten by a male slave without being married to her. Both may be admitted to participate *in the heritage*. Thus is the law settled.

CLXXVII.

MENU:—A son begotten through lust on a *'Súdra* by a man of the priestly class is even as a corpse though alive, and is thence called *in law* a living corpse.

This, says JÍMÚTAVÁHANA, relates to *the son of* a woman not legally married. But CULLÚCABHATTA considers it as relating to *the son of* a woman lawfully married: being incapable of fulfilling the purpose of obsequies for his father, and so forth, he is even as a corpse.

* Book III, Chapter I, v. 33.

CHAP. IV.

ON

LEGITIMATE AND ADOPTED SONS.

SECT. I.—*On the several Modes of Filiation.*

WITH the intent of explaining particularly the right of sons legitimate, or adopted, to succeed to their father's estate, they are first described,

CLXXVIII.

MENU:—Of the twelve sons of men whom MENU, sprung from the self-existent, has named, six are kinsmen and heirs; six not heirs, *except to their own father*, but kinsmen.

2. The son begotten by a man himself *in lawful wedlock*, the son of his wife begotten *in the manner before mentioned*, a son given *to him*, a son made *or adopted*, a son of concealed birth *or whose real father cannot be known*, and a son rejected *by his natural parents*, are the six kinsmen and heirs:

3. The son of a young woman *unmarried*, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *'Súdra*, are the six kinsmen, but not heirs *to collaterals.*

MENU sprung from the self-existent BRAHMÁ, and first of the fourteen MENUS: among those twelve sons of men whom he has named, the first six are pronounced kinsmen and heirs to collaterals: the result is, that, as kinsmen, they offer the funeral cake and water to *Sapindas* and *Samánódacas;* and as heirs, they succeed to the heritage of their collateral relations on failure of male issue, as well as to *the estate of* their own father. The last six may not take the heritage of any except their own father; but they participate in his wealth, for it is declared *generally* without any exception, that *sons* inherit the estate of their father (CCXXIII a). When learned priests are mentioned as heirs to all persons *on failure of kin*, then, indeed, consanguinity is not the ground of their succession, *for* there is no other ground but their claim as learned priests: these, *on the contrary*, are kinsmen, and therefore perform the duties imposed by that relation, offering water and celebrating other rites. CULLÚCABHATTA.

But Médhatit'hi, explaining the compound used in the text by the negative superadded to the apposition called *dwandwa*, says, "six are neither heirs nor kinsmen:" they are not heirs, except to their own fathers. That is wrong; for Baud'háyana mentions them as kinsmen.

CLXXIX.

Baud'háyana:—Consanguinity, *denoted by a common family appellation*, belongs to the son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son of a priest by a *'Súdra.*

And, in fact, Yájnyawalcya, after premising the twelve sons, says, "on failure of those first mentioned, the next in order give the funeral cake "and claim the heritage" (CLXXXIX): hence it is evident, that all may offer the funeral cake for their own fathers; and the difficulty is reconciled by not admitting their right of offering it for any other. How can it follow from the terms of the text (CLXXIX), that they are kinsmen to collaterals? These is no rule for all who partake of the same family-name offering the funeral cake to collaterals; since *it would follow that* one who is not related within the degree of a *Sapinda* might offer it, even though he were an unconnected stranger.

CLXXX.

Baud'háyana:—Participation of wealth belongs to the son begotten by a man himself *in lawful wedlock*, the son of his appointed daughter, the son begotten on his wife *by a kinsman legally appointed*, a son given, a son made *by adoption*, a son of concealed birth, and a son rejected *by his natural parents.*

This right of succession, from which the six first mentioned are excluded, must be understood of succession to the estate of any but their own fathers. Of whose family-name do the six named with the son of the body (CLXXX) partake, of their natural, or their adoptive fathers? The answer is, they only claim the family of him whose son each of them becomes; for sons inferior to these, namely, the son of an unmarried girl and the rest, claim the family of their adoptive father; why then should not the rest *have a similar claim?* The son of the body, of course, belongs to the same race *with his father;* and Menu, in speaking of a son given, explicitly declares that he must never claim the family of his natural father.

CLXXXI.

Menu:—A given son must never claim the family and estate of his natural father: the funeral cake follows the family and estate; but of him who has given away his son, the funeral oblation is extinct.

The term "funeral oblation," intends that which is made for a father. If a son may not claim the family of his natural father, he may surely claim that of his adoptive parent. It is accordingly declared in the *Cálicá puráná*, after premising "the son begotten by a man himself in lawful wedlock, the son of a wife begotten by an appointed kinsman, a son given, a son made *by adoption*, and the rest," that their investiture and other ceremonies must be performed by their own family.

CLXXXII.

Cálicá purána:—He, O lord of the earth! on whom the ceremonies should be performed under the family name of his father, is not deemed a son until the ceremony of tonsure have been completed; he becomes the son of another, *under whose family name it is performed*:

2. Sons given and the rest, when the ceremonies of tonsure and the like have been performed on them by the *adopter's* own family, are deemed adopted sons; any other is called a slave.

In the first text "father" signifies the natural parent; "another" signifies any other *besides the natural father*. Affiliation therefore depends on the ceremony of tonsure; it does not require the several solemn rites, from the section of the navel-string, until the child be fed with rice: and that ceremony of tonsure is valid, even when performed at the season of investing the child with the mark of his class; but adoption is limited to the fifth year.

CLXXXIII.

Cálicá purána:—But after their fifth year, O king! sons given and the rest must not be adopted; let the adopter take a boy five years old, and first perform a sacrifice for male offspring.

The sacrifice named in the text (*putréshti*) shall be performed, if the adopter maintain a perpetual fire; but *only* an oblation with holy words from the *Véda*, if he do not maintain *such* a fire: this will be explained in its place. If a boy five years old be regularly adopted, but the ceremony of tonsure be not performed, having been deferred, according to the usage of the family, until the season of investing the child with the mark of his class; then, should the adopter die in the interval, is this son qualified to perform his obsequies?

Some argue, from the letter of the text (CLXXXII 2), that, the ceremony of tonsure not having been performed by his *adopter's* own family, his affiliation is null, and therefore he is not qualified to perform obsequies. That is wrong; for the text is propounded to declare void the adoption of a given son, on whom the ceremony of tonsure has been performed by the family of his natural father. Else, if all the ceremonies, including marriage, which is comprehended in the words "and the like," cannot be celebrated, the affiliation would be invalid, and he would not belong to the family *of his adoptive father*; and consequently the ceremony of tonsure and of investiture, even though performed in the adopter's family, would be invalid, or would be partly imperfect; and the rites could not be performed at all. Adoption alone constitutes affiliation; but the ceremony of tonsure performed by the family, to which he originally belonged, renders it essentially invalid, like a needless repetition. But this affiliation, *once effected*, is not cancelled by his naming his former family in performing a sacrifice, or in consecrating a pool. Birth caused by male seed and uterine blood is one ground of filiation; the second birth, by investiture and other ceremonies, is equally a ground of filiation, by whomsoever performed. When he who has procreated a son gives him to another, and that child is born again by the

rites of initiation, then his relation to the giver ceases, and a relation to the adopter commences: this birth cannot afterwards become null by his erroneously reverting to his original family. The subject shall be further discussed. Thus some expound the law. To expatiate would be superfluous.

The twelve sons are enumerated in the same order by **Menu** and **Baud'háyana**, but in a different order by others.

CLXXXIV.

Gótama:—The son begotten by a man himself *in lawful wedlock*, the son of a wife *begotten by an appointed kinsman*, a son given, a son made *by adoption*, a son of concealed birth, and one rejected by his natural parents, are sons who inherit property.

2. The son of an unmarried girl, the son of a pregnant bride, a son by a twice-married woman, the son of an appointed daughter, a son self-given, and a son bought, claim the family of their adoptive fathers, and a fourth part *of the paternal estate*, if there be no son begotten in lawful wedlock, nor other *superior claimant.**

CLXXXV.

Vishnu:—Sons are twelve: the first is the son begotten by a man himself on his own wife (*or the son of the body, for this agrees with* Vasisht'ha); the second is the son of a wife, begotten by a man of equal class on *a widow duly* appointed: she who is given in marriage by her father, with a declaration in this form, "her son shall be my son;" and she who, having no brothers, is so appointed to raise up sons to her father, though not yet given in marriage, is an appointed daughter, *and considered as the third son:* the fourth is the son of a twice-married woman; the fifth, the son of an unmarried girl; the sixth, the son of concealed birth, (he is son of him on whose wife he was begotten;) the seventh is the son of a pregnant bride, (and the son of a woman espoused while pregnant is son of the man who marries her;) the eighth is a son given, and becomes the son of him to whom he is given by his natural father or mother; the ninth a son sold; the tenth a son self-given, (he is son of the man to whom he gives himself;) the eleventh is a son rejected, (being forsaken by his father or mother, he becomes the son of him by whom he is received;) the twelfth is a son any how produced irregularly, (*and he is also called* 'Saudra, *or a son by a* 'Súdra).

* The text was here cited partially; but in subsequent sections it is quoted entire. T.

Such is the order in which sons are enumerated by VISHNU; they are enumerated in another order by SANC'HA and LIC'HITA.

CLXXXVI.

SANC'HA and LIC'HITA:—A son rejected *by his father or mother*, the son of a pregnant bride, a son given *by his natural parents*, a son bought, a son by a *Súdra*, and a son self-given; these six sons are not heirs *to collaterals, nor to their own father jointly with other sons.*

2. There is an alternative in respect of partition among those who are heirs: the son begotten in lawful wedlock, the son of a wife begotten *by a kinsman*, the son of an appointed daughter, the son by a woman twice married, the son of a young woman unmarried, and a son of concealed birth, are six kinsmen and heirs, who belong to the same race with their fathers and paternal grandfathers, *who jointly inherit* the estate, and *offer* funeral cakes, and *who claim affinity* with *Sapindas.**

CLXXXVII.

HÁRÍTA enumerates sons in another order:—A son begotten by a man himself on a faithful wife, the son of his wife begotten *by a kinsman*, a son by a twice-married woman, the son of an unmarried girl, the son of an appointed daughter, and a son of concealed birth, are heirs to kinsmen.

2. A son given *by his parents*, a son bought, a son rejected, the son of a pregnant bride, a son self-given, and a son made *by adoption*, are not heirs to kinsmen. †

CLXXXVIII.

NÁREDA:—A son begotten by a man himself *in lawful wedlock*, a son begotten on his wife *by a kinsman*, the son of an appointed daughter, the son of an unmarried girl, the son of a pregnant bride, and a son of concealed birth,

2. A son by a twice-married woman, a son rejected, a son given *by his natural parents*, a son bought, a son made *by adoption*, and a son self-given, are declared to be twelve sons:

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* The latter part was not quoted in this place; but in subsequent sections the text is cited entire. T.

† See the gloss after v. 219.

3. Among these, six are heirs to kinsmen; six not heirs, but kinsmen; their relative rank corresponds with the order in which they are here named:

4. On the death of the father, they succeed in their order to his wealth; on the failure of the best and the next best, let the inferior in order take the heritage.

CLXXXIX.

YÁJNYAWALCYA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife *begotten by a kinsman*, the son of concealed birth, the son of an unmarried girl, a son by a twice-married woman, a son given *by his natural parents*, a son bought, a son made *by adoption*, a son self-given, the son of a pregnant bride, and a son rejected,) adds:—On failure of those first mentioned, the next in order give the funeral cake, and claim the heritage.

CXC.

DÉVALA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife, the son of an unmarried girl, a son of concealed birth, a son rejected, the son of a pregnant bride, a son by a twice-married woman, a son given *by his natural parents*, a son self-given, a son made *by adoption*, and a son bought,) adds:—These twelve sons are considered as offspring *by birth or adoption; namely*, sons begotten by a man himself, sons begotten by another, *but fathered by him*, sons acquired, and sons by their own consent:

2. Among these, the first six are kinsmen and heirs, the other six inherit only from their own father; the rank of sons is distinguished by the order in which they are enumerated.

3. All these adopted sons are pronounced heirs of a man who has no son by himself begotten; but, should a son of his body be afterwards born, there is no larger portion for them by reason of seniority.

4. Such among them as are of the same class *with that son*, shall have, as their share, one-third of the property, *and two-thirds of it go to him*; but those of a lower class must live under him with a provision of clothes and food only.

CXCI.

YAMA:—Twelve sons are named by Sages, who know the principles of things; among these sons, six are kinsmen and heirs; six not heirs, but kinsmen:

2. The first is declared to be the son begotten by a man himself *in lawful wedlock;* the second, a son begotten on his wife *by a kinsman;* the third is the son of an appointed daughter: thus have the learned declared the law.

3. The fourth is a son by a twice-married woman; the fifth, a son by an unmarried girl; the sixth, a son of concealed birth in the husband's mansion: these six give the funeral cake, and take the heritage.

4. A son rejected *by his father or mother*, the son of a pregnant bride, a son given *by his natural parents*, a son made *through adoption*, and fifthly a son bought, and *lastly*, he who offers himself of his own accord;

5. These six, being of mixed origin, are kinsmen, but not heirs *except to their own father.*

In the *Cálicá purána*, sons are enumerated in the order propounded by MENU.

CXCII.

The *Cálicá purána:*—The son begotten by a man himself *in lawful wedlock*, the son begotten on his wife *by a kinsman*, a son given *by his natural parents*, a son made *by adoption*, a son of concealed birth, and a son rejected, take shares of the heritage.

2. The son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *'Súdra*, are six sons who are *contemptible as* dust.

3. On failure of the first respectively, invest the next with filial rights.

(A distinction is subjoined:)—But appoint not to the empire the son of a twice-married woman, nor a son self-given, nor one born of a female slave.

According to NÁREDA, a son rejected *by his natural parents* is competent to inherit, preferably to a son given; but according to VISHNU, a son given is entitled to the heritage, to the prejudice of a son rejected *by his natural parents.* Similar discrepancies in the texts of various Sages will be reconciled in another place. The nature of the affiliation must be first delivered; for, without understanding the character of their filiation, the comparative excellence of these sons cannot be discussed.

SECT. II.—*On the Son begotten in lawful Wedlock.*

CXCIII.

VASISHT'HA :—Twelve sons are shown in holy writ; the first is the son of the body, begotten by a man himself on his own wedded wife.

"Shown in holy writ;" by these words the admission of the law is ratified : therefore, *says the legislator*, we admit the authority of the scriptural precept alone *in this instance*. "Begotten by a man himself" excludes the son begotten on his wife by a kinsman; and "wedded wife" excludes the wife self-given, who offers herself in these words, "I am thine." "The first;" since he is declared to be first in rank, he bars the succession of any other. A question which arises on this point will be discussed in treating of Appointed Daughters. "The first is begotten by a man himself on his own wife" (CLXXXV); a son begotten on the wife of another, by a man not duly appointed, falls under the description of a son by a twice-married woman; he is ninth in VISHNU's text. This will be explained under its proper head. "Wedded," must be supplied; for this text coincides with that of VASISHT'HA (CXCIII).

CXCIV.

MENU :—Him whom a man has begotten on his wedded wife, let him know to be the first in rank, as the son of his body.

CULLÚCABHATTA has another reading of the first measure,* *but the sense is precisely the same.* He thus expounds the text: "him whom a man begets on his own wife legally married, let him know to be chief in rank, as the son of his body."

CXCV.

DÉVALA :—That son who is begotten by a man himself on his wedded wife, is called the son of his body, chiefly sustaining his father's lineage.

"Chiefly sustaining his father's lineage;" an expression of praise, because he continues the race in its superior dignity.

CXCVI.

BAUD'HÁYANA :—A son who was begotten by a man himself on his wedded wife of equal class, let him know to be the *legitimate* son of his body.

"On a wife of equal class;" this denotes, that a legitimate son is one begotten by a *Bráhmana* on a *Bráhmenì* woman. Accordingly it is inferred, by CULLÚCABHATTA, from the terms of this text, that the son of the body is one begotten by the husband himself on a woman of equal class.

CXCVII.

SANC'HA and LIC'HITA :—Let a priest take the hand of a woman equal in class; the bodies of his ancestors are born again of her: let him figuratively address his own soul, in the person of his son.

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* *Swé cshétré sanscrĭtáyán tu*, instead of *sanscrĭtáyán tu bháryáyam*.

These Sages subsequently mention the form of address; "springing from successive bodies, &c."

CXCVIII.

SANC'HA and LIC'HITA:—"Ancestors seize the infant fœtus produced "from uterine blood; thou, my soul, art born again, that thou "mayest here sleep in body.

2. "For the benefits conferred on parents, thou, my soul, art called "son; because thou deliverest (*tráyasé*) from the hell called *put*, "therefore thou art named son (*putra*)."

The meaning is; because the bodies of ancestors are born again of her, (that is, of the wife equal in class,) therefore thou springest from successive bodies. "Let the father figuratively address his own soul, in the person of his son." Consequently the son is even the same with the father: and the father indeed is son of some person, but still the same identity exists *of him and his father*. "Since thou sleepest in body,* therefore art thou born, although thou beest an *immortal* soul." Otherwise there could be no birth of a sempiternal spirit. Consequently the sense is, "thy birth is an union with body." "Thou, my soul, art called son, from the benefits conferred on thy father and mother:" that is, conferring benefits on thy father and mother, thou art called son. What benefits? The text proceeds, "because thou deliverest thy father and mother from *put* (a hell so called)." Or, thy father and mother indulgently call thee son: it is therefore fit that thou shouldst deliver from the hell called *put* thy father and mother, who confer a benefit on thee by becoming the authors of thy existence, which is obtained for the sake of thy performing *the several* rites during purity and impurity, and for the sake of enjoying the first of such rites. They design thee son, praising thee because thou dost perform this office. The procreation of a son upon a woman of equal class being alone applauded, it is intimated by SANC'HA and LIC'HITA, that they admit a legitimate son to be produced by a woman of equal class only.

CXCIX.

'APASTAMBA:—The sons of those who approach a woman of equal class legally espoused and not previously married *to another*, are concerned with religious rites, and may not be excluded from inheritance.

"Not previously married to another;" who has had no former husband; that is, no husband prior to him who has now espoused her; *in other words*, who has had no husband before him. A twice-married woman is thereby excepted. Consequently she who has been even verbally betrothed to another before him, falls not within this description. The term is so expounded in the *Pracása* and *Retnácara*. "Legally espoused;" the term is explained in the *Retnácara*, 'wedded by the ceremony of joining hands, as ordained by the law.' Some expound it, such as the law declares a fit match, not being related to his father within the degree of *Sapinda*, or *other prohibited degree of consanguinity, or* the like. "Are concerned with religious rites;" with the perpetual fire and the like: consequently these alone can be employed as substitutes in using the sacrificial fire, and in

* Alluding to the derivation of *purusha*, animated being, and man especially. T.

other duties incumbent on the father himself. This is the principal subject of the text. *The legislator adds;* "they may not be excluded from inheritance;" they must not be excluded from the former heritage. Such is the meaning, as explained in the *Retnácara.* These alone succeed to the heritage: consequently, 'APASTAMBA also declares that son only to be first in rank who is born of a woman of equal class *with her husband.* But there is no son superior in rank to the son begotten in lawful wedlock. If the son produced by a woman of unequal class were considered as a son begotten in lawful wedlock, the epithet "equal in class" would not have been inserted. YÁJNYAWALCYA also describes the son of the body as born of a lawful wife. MISRA expounds the term, 'a woman equal in class, and lawfully married.' For,in a gloss on another text of YÁJNYAWALCYA (CCCXCVIII), "wife" *(patní)* is explained one equal in class, and having precedence. In illustration of which, RAGHUNANDANA cites the text of MENU (Book IV, v. XLVI).

CC.

YÁJNYAWALCYA:—The legitimate son of the body is one who is produced by a lawful wife; the son of an appointed daughter is equal to him; and the son of a wife is one begotten on her by an appointed kinsman sprung from the same original stock *with her husband,* or by another person *duly authorized.**

In the gloss of the *Dípacalicá,* on this text, it is said, 'the son begotten by a man himself on a woman of equal class, lawfully married to him, is the son of his body.' A woman of equal class, espoused in a legal form of marriage, is a lawful wife: he who is born of her is the first in rank, as the son of the body. These commentators, finding texts deliverd by various Sages, the sense of which seems obvious, affirm, that the son of the body is one who is begotten by the husband himself on a woman of equal class. But CHANDÉSWARA does not concur in that opinion; because, if that were the case, the son of the priest, by a woman of the military class would not be included among the twelve sons. It should not be argued, that he will be the twelfth, as described by VISHNU (CLXXXV.) It is proper to consider the son by a *Súdra* as the twelfth, because he is mentioned as such by MENU (CLXXVIII and CLXXVII.) Again; if the son produced by a woman of the military class, regularly espoused, where the twelfth, he would be inferior to all the rest; for the twelfth son is described by every legislator as the lowest of all. But the son of her whom the law permits to be employed in acts of religion with her husband, cannot be exclusive of the twelve sons *enumerated;* nor can he be lowest of all. The commentator therefore reconciles the seeming contradiction, *by saying,* "wife equal in class" here signifies a woman of a twice-born class, married to a twice-born man, or a woman of the servile class to a man of the servile class; not a priestess alone married to a priest. The *Parijáta* concurs in this exposition. A son begotten in lawful wedlock is universally considered as the legitimate descendant of his maternal grandfather and of his own father; he inherits property, and is evidently competent to perform the *śráddha* and other rites. This subject has been sufficiently treated.

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* I cite the verse at large; in the original, the different parts of it are quoted in different sections, under the heads to which they relate. T.

SECT. III.—*On the Son of an appointed Daughter.*

ART. I.—*On the Rights of an appointed Daughter, and of her Son.*

He is second according to YÁJNYAWALCYA; for, after describing the son of the body as one begotten on a lawful wife, he adds, "the son of an appointed daughter is equal to him" (CC). BAUDHÁYANA (CLXXX) likewise places him before the son begotten on a wife *by a kinsman*, and after the son begotten by a man himself *in lawful wedlock*. DÉVALA also names the son of an appointed daughter immediately after the son of the body.

CCI.

DÉVALA:—The son of an appointed daughter is equal to him; he shall inherit, as a son, the estate of his father and of his maternal grandfather who leaves no male issue.

It appears from the text of VRĬHASPATI, that the son of an appointed daughter is superior to the son begotten on a wife by a kinsman.

CCII.

VRĬHASPATI:—A son given, a son rejected, a son bought, a son made *through adoption*, and a son by a *`Súdra;* these, if pure by class, and irreproachable for their conduct, are held in a middle degree of estimation.

2. The son begotten on a wife *by a kinsman*, is contemned by good men; and so are the son of a twice-married woman, the son of a young woman unmarried, the son of a pregnant bride, and a son of concealed birth.

It follows that the rest are of superior rank. Now the rest are the son of the body, whose pre-eminence is universally admitted, and the son of an appointed daughter. The son self-given is not mentioned in the text: to count him among those of superior estimation, because a certain legislator has not declared that he is somewhat inferior to the son of the body, would be improper. The omission will be otherwise explained in a subsequent section.

NÁREDA (CLXXXVIII) assigns the third place to the son of an appointed daughter, and the second to the son begotten on a wife *by a kinsman;* and the appointed daughter *herself* is considered by VASISHT'HA as third in rank.

CCIII.

VASISHT'HA:—She who has no brothers acquires filiation, reverting to the family of her ancestors; the appointed daughter is considered as the third son, *but* equal to the son of the body, for she may perform his duties.

"Reverting to the family of her ancestors;" she returns to the original relation, that is, she reverts, as a son, to the family of her father.

The *Retnácara.*

A daughter, leaving the family of her father, enters that of her husband, and bears children; afterwards she reverts to the family she had quitted, and acquires filiation, by raising up issue to it. Consequently she is said to revert to the family, because she is bound to perform the duties incumbent on a son; hence she is expressly said to become a son. It follows, that she is competent to inherit. The claim of her son, as suggested by former texts, will be hereafter considered.

CCIV.

SANC'HA and LIC'HITA:—The son of PRACHÉTAS has said, "the appointed daughter is like a son;" her offspring, being the son of an appointed daughter, shall offer the funeral cake both for his maternal grandfather and for his own father; there is no difference in the benefits conferred by a son and by a daughter's son: from this apprehension, a man should not marry a damsel who has no brother.

"Benefits;" delivering his parent from the hell called *put*. "From apprehension;" from the doubt whether or not her father has taken her as a son. Thus the *Retnácara*. From this apprehension a man, who wishes to contract a marriage should not take a damsel who has no brother. This is one construction of the text.

A daughter appointed to raise up a son, is like unto a son; that is, she is equal to him, because she performs his duties: so says DACSHA, the son of PRACHÉTAS. Her offspring is called the son of an appointed daughter: he shall offer the funeral cake both for his maternal grandfather and for his father. There is no difference between a son and a daughter's son, (that is, between the son of the body and the son of an appointed daughter,) in the benefits conferred by them; as the son of the body delivers his father from the hell called *put*, so does the son of an appointed daughter deliver his maternal grandfather: and further, since it is declared that her son delivers his maternal grandfather from the hell called *put*, he does not deliver his natural father: therefore, in the doubt whether she be an appointed daughter, let not a bridegroom espouse such a bride, but let him marry a damsel who has a brother. This is the whole meaning.

"Equal to him" (CCI); equal to the son of the body. The *Dípacalicá*, in explaining the text of YÁJNYAWALCYA, "the son of an appointed daughter is equal to him" (CC), has this remark; 'he shall have an equal share with the son of the body.' MISRA concurs therein.

CCV.

The *Brahme purána*:—Such a daughter receives an equal share of the patrimony.

CCVI.

MENU:—But, a daughter having been appointed to produce a son for her father, and a son *begotten by himself* being afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for a woman.

By saying this, MENU shows that an appointed daughter may claim the heritage; and in the following text he describes her son as becoming a son's son *in contemplation of law.*

CCVII.

MENU:— By that male child whom a daughter thus appointed, either by an implied intention, or a plain declaration, shall produce from an husband of an equal class, the maternal grandfather becomes in law the sire of a son's son: let that son give the funeral cake, and possess the inheritance.

CCVIII.

MENU:—Let the son of an appointed daughter offer the first funeral cake to his mother; the second, to her father; the third, to her paternal grandfather.

In making double oblations,* it is intimated, that a funeral cake is offered to the mother installed in the place of a father, and to the maternal grandfather in the place of a paternal grandfather; but if his natural father have no other son begotten in lawful wedlock, he must likewise offer the funeral cake for him, since he is also son of his natural parent.

CCIX.

MENU:—The son of a daughter, *appointed in the manner directed,* shall inherit the whole estate of his father, who leaves no *other* son.†

CULLÚCABHATTA expounds "father" his natural parent. He must therefore, of course, be admitted to present two sets of double oblations; but the ancestry in his maternal grandfather's line, is the same with the ancestry in the line of the natural father of his natural mother.‡ Or, like the son of a wife, considered as son of two fathers, he shall use two names in offering the same cake for a father. Consequently the maternal grandfather's line shall have two funeral cakes in two different forms: this does not extend to the maternal grandfather's grandfather, for he does not belong to the first set; but the maternal line, ascending from the mother, is considered in two different lights.

It follows, from what has been stated, that the appointed daughter, not her son, is equal to a *true legitimate* son. The appointed daughter shall be described.

CCX.

MENU:—The son of a man is even as himself; and as the son, such is the daughter: how then, *if he have no son,* can any inherit his property, but a daughter, who is closely united with his own soul?

* *Párvana:*—A *s'ráddha* with a double set of funeral cakes: three cakes are offered to the father, paternal grandfather, and great grandfather; and three to the maternal grandfather, his father, and his grandfather; and the crumbs of each set to the remoter ancestors paternal and maternal. T.

† The gloss compels me to alter the translation. See MENU, Ch. IX, v. 181. T.

‡ That is, the same who are treated as ancestors of the male line in one set, are also treated as ancestors of the female line in both sets of double oblations. See the first note of this page. T.

Again; the son of an appointed daughter is equal to a son's son. On failure of a son of the body, these two, *the appointed daughter and her son*, shall inherit the property, although there be sons of other descriptions; but if a son of the body be left, the son of the appointed daughter shall take, for his share, the seventeenth part, mentioned by HÁRÍTA and others (CCXIX). The right of the appointed daughter, and of her son, to inherit on failure of a son of the body, as mentioned by CULLÚCABHATTA, must be considered as a right to the whole of the heritage, agreeably to the texts of MENU. The right of the son produced by an appointed daughter, to an equal share of the heritage, follows from the texts of YÁJNYAWALCYA and others; "the son of an appointed daughter is equal to the son of the body" (CC). It should not be argued, that, since the text of HÁRÍTA ordains a seventeenth part, therefore equal partition is not proper in this case; and the equality mentioned merely intends the exclusion of the son begotten on a wife *by a kinsman* and other inferior sons. The seeming contradictions are reconciled by referring the text of HÁRÍTA to the son of an appointed daughter deficient in virtue: and it is absolutely necessary to consider such texts as relating to deficiency in virtue; for the *Brahme purána* mentions the fourth part of a share; and various texts show various allotments for the son of an appointed daughter. To assign an equal share to him, if he be equal in virtue, is therefore proper.

CCXI.

The *Brahme purána*:—The son begotten on a wife *by a kinsman* shall obtain a third part as his share; and the son of an appointed daughter, a fourth.

JÍMÚTAVÁHANA, VIJNYÁNÉSWARA, and the rest, as is remarked by some authors, explain the terms by the apposition called *carmadháreya*, "a daughter appointed to be a son;" *instead of* "*son of an appointed daughter*." But others argue, from the form of appointment as ordained by MENU, that the son of the appointed daughter thence appears to become the *adopted* son of the maternal grandfather. Marriage with an appointed daughter is censured; but if she were considered as the son of her own father, the marriage of an appointed daughter would not be reprehended, since nothing would prevent her son remaining as the issue of his natural father.

CCXII.

MENU:—He who has no son may appoint his daughter in this manner to raise up a son for him, *saying*: "the male child who shall "be born from her in wedlock, shall be mine for the purpose "of performing my obsequies."

Therefore the son of an appointed daughter alone becomes the *adopted* son of his maternal grandfather (CCIV).

CCXIII.

BAUD'HÁYANA:—A boy born of a daughter expressly appointed *to raise up issue for her father*, is the son of an appointed daughter; any other is *merely* a daughter's son.

The participation of an appointed daughter, as mentioned by MENU (CCVI), is acknowledged on the authority of his text, it does not follow that she becomes a son; and the expression of VASISHT'HA, describing her as a son (CCIII), is merely a *lax* phrase: if both were considered as such, there would be fourteen descriptions of sons. Nor is there any want of argument on which to select one of two senses in preference to the other; for the form of appointment denotes the filiation of the daughter's son, and oblations to ancestors would fail if it respected the daughter: consequently the son of that daughter is directed to offer the first funeral cake to his mother, (that is, to offer it, *even* at *Gayá*, before he presents one to his father; for the purpose of obviating the supposition that at *Gayá* he must perform the *śráddha* for the paternal line, and afterwards perform it for the maternal ancestors, that order being ordained generally in the *Váyu purána*. Hence it appears that the son of an appointed daughter shall always first perform the *śráddha* for the maternal line. He is called the son's son of his maternal grandfather, because he is produced from one begotten by that ancestor. The appointed daughter shall only take the heritage if she have no son; and high rank is ascribed to such a daughter, because she may become mother of a son *adopted by her father*. The family, claimed by the son of such a daughter, is that of his maternal grandfather, *for it is so expressed* in the text of GÓTAMA (CLXXXIV 2); and the text of SANC'HA and LIC'HITA (CLXXXVI) coincides with that of GÓTAMA, since the word "father" suggests the husband of the wife *on whom a son is begotten by a kinsman*, and other *adopted fathers*, and since the son of concealed birth is common to both texts. It is intimated by the text of YÁJNYAWALCYA (CC), that the son of an appointed daughter shall have an equal share with the son begotten in lawful wedlock; but he bars the inheritance of every other son: else the phrase, "on failure of the first of these, the next in order shall give the funeral cake, and take the heritage" (CLXXXIX), would be inaccurate. It should not be objected, that the equal participation of the appointed daughter alone is propounded by MENU (CCVI), because the mention of an advanced share in right of primogeniture would otherwise have been omitted; consequently the equal participation of her son being established from parity of reasoning, the expression "shall give the funeral cake and possess the heritage," must be explained as signifying that he shall inherit the whole estate *on failure of a son begotten in lawful wedlock*. Even though unequal partition were made, it might be questioned whether a portion should not be allotted to the first-born: for instance, the portion of an eldest son is allotted in right of primogeniture; it may be therefore questioned whether the fourth part or the like shall not be similarly allotted in her right as an appointed daughter, or in right of her son: to obviate this doubt, MENU declares that the division of the heritage must be equal; that is, it must be made without any allotment in right of primogeniture. Accordingly DÉVALA (CXC 3 and 4) *in such cases* forbids the allotment of any portion in right of seniority.

But others hold, that the text of MENU does not express "he shall be my son;" but, "he shall be mine for the purpose of performing my obsequies;" (CCXII). Consequently the daughter alone is considered as his son; and her son is considered as his son's son; and the descendants of her son are considered as the *remoter* descendants of her father. But the natural father of her son, and his forefathers, are considered as ancestors in a secondary degree, like a maternal grandfather. "He shall inherit, as a son, the estate of his father and maternal grandfather who leaves

no male issue" (CCI); "as" is employed in the sense of similarity; "who leaves no male issue" refers to the word "father." The double set of oblations shall not be offered by him for his natural father, since he is not related to different persons in the degree of a son: for a man appointing his daughter *to raise up issue for him*, gives her to a son-in-law; that husband in a manner consents to relinquish every right, and her father gives her *to him* merely to be enjoyed: the son, produced by her, does not revert to the family of his natural father for any occasion he may find to claim his son. Has not the father, who furnishes the seminal fluids, an equal claim to the son produced therefrom, as it expressed in the text, "a son formed of seminal fluids and of blood, proceeds from his father and mother" (Book II, Chap. IV, v. 8)? It should not be objected, that here, as in the case of a son begotten on a wife *by a kinsman*, the offspring belongs to the owner of the field, not to him who cast the seed. If there be an express agreement, the produce of the seed may be claimed by the owner of the field: but in this case, although the son-in-law knew not that she was appointed to raise up issue for her father, still her male child is truly the son of an appointed daughter. That is intimated by SANC'HA and LIC'HITA (CCIV). To the question proposed the answer is, No; for the matter must be settled agreeably to the practice which prevails in the case of produce, where the intention of the party has been declared in these words, "by whomsoever seed may be sown, the produce of this my field shall be mine:" in that case, if an agreement have been made, the owner of the seed shall take half the produce; but if no express agreement have been made, the owner of the field shall have the whole produce. Or, the practice which subsists in respect to cattle, may be admitted in the case of an appointed daughter.

CCXIV.

MENU:—As with cows, mares, female camels, slave girls, milch buffaloes, she goats, and ewes, it is not the owner of the *bull, or other* father, who owns the offspring; even thus is it with the wives of others.

2. They who have no property in the field, but, having grain in their possession, sow it in soil owned by another, can receive no advantage whatever from the corn which may be produced.

3. Should a bull beget a hundred calves on cows not owned by his master, those calves belong solely to the proprietors of the cows: and the strength of the bull was wasted.

4. Thus men, who have no marital property in women, but sow in the fields owned by others, may raise up fruit to the husbands; but the procreator can have no advantage from it.

5. Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner; for the receptacle is more important than the seed.

But there is this difference, that the connexion *of the produce with the receptacle* is inferior to its connexion with the seed.

This appointed daughter is mentioned by MENU separately from the thirteen sons. She is not male, and therefore she is not placed under the same head with sons. The son of an appointed daughter is mentioned by other Sages, as the son self-given is omitted by one and noticed by another. According to this opinion, as the son's son inherits on failure of the son, so, on failure of the appointed daughter, her son *inherits the estate*. It should not be objected, that, if two daughters be so appointed, and one of them decease, the other would have an equal title with the son of the deceased daughter. It may be so, if authorized by the law.

CCXV.

VRĬHASPATI:—One alone, namely, the son of the body, is declared to be owner of the wealth *left by his father;* an appointed daughter is equal to him; but the other sons shall only be maintained.

The text of VASISHT'HA concurs in describing the appointed daughter as affiliated (CCIII). But is not this inconsistent with the form of appointment mentioned by VASISHT'HA? for he acknowledges the son of the appointed daughter to be the adopted son *of her father*.

CCXVI.

VASISHT'HA:—"This damsel, who has no brother, I will give unto "thee, decked with ornaments; the son, who may be born of her, "shall be my son."

No; for the second word "son" here signifies descendant; and since the offspring of the daughter is the descendant of her father, it follows that she, becoming the root *of that lineage*, is considered as similar to a son. In fact, the appointed daughter becomes a son when the declaration runs in this form, "this daughter shall raise up offspring to me, as if she were my son;" and her claim to the family of her father remains unaltered. But her son alone is considered as the son *of his maternal grandfather*, when the declaration runs in this form, "her son shall be my son;" and in this case, her son, instead of herself, belongs to the family of his maternal grandfather. In MENU's opinion, the appointed daughter is not qualified to offer the double set of funeral cakes and the like; for, in fact, she is a woman. The mother, maternal grandmother, and maternal great grandmother, compose her son's maternal line; the mother, maternal grandfather, and maternal great grandfather, his paternal line; and the maternal grandfather and so forth, ascending to the third degree, the line of his maternal grandfather: in some cases, the same person must be acknowledged to hold a double relation. But, according to other opinions, the mother, maternal great grandmother, and maternal grandfather's grandmother, compose the maternal line; the maternal grandfather and so forth, ascending to the third degree, the paternal line; and there is no maternal grandfather's line, for it is unacknowledged by the law. It should not be argued, that the maternal grandmother is considered as a mother, because the following verse exhibits a daughter appointed with the concurrence of his wife SETARÚPÁ, by MENU, sprung from the self-existent. Since there is nothing to prevent the maternity of the natural mother, the maternity *of another* is merely figurative, like that of a stepmother.

'Srí Bhágavata :—To RUCHI, O king! with the consent of 'SETARÚPÁ, he gave 'ACÚTI, imposing on her the duty of an appointed daughter, although she had brothers living.

The superiority of the son produced by an appointed daughter, compared with the son begotten on a wife *by a kinsman*, is founded on his not being procreated by an adulterer. For this cause the second place is assigned to him by YÁJNYAWALCYA and others: but VASISHT'HA and the rest assign him the third place, supposing the case of his inferiority in virtue, compared with the son of a wife begotten *by a kinsman* duly authorized; but not considering him as inferior, because the seed and field both appertain to another: for the right of obtaining offspring from this woman is not forfeited, any more than the property of the owner in a thing, pledged for use.

CCXVII.*

Brahme purána:—The son begotten by a man himself *in lawful wedlock*, even though last born, shall enjoy the whole of the estate: let the son of a wife begotten *by a kinsman* obtain a third part as his share; and the son of an appointed daughter, a fourth:

2. The son made *by adoption shall have* a fifth part; the son of concealed birth, a sixth; the son rejected, a seventh; and the son of an unmarried girl, an eighth:

3. The son of a pregnant bride *takes* a ninth *part*; the son bought, a tenth; the son by a twice married woman, the next *share, or an eleventh part*; the son self-given, a twelfth;

4. And the son by a *'Súdra* enjoys a thirteenth part of his father's estate.

How shall the partition be made? Not by allotting to the son of a wife so much as is a third part of the whole estate; to the son of an appointed daughter, a fourth of the whole; to a son made *by adoption*, a fifth of it; and so on progressively down to the son by a *'Súdra*: for, were it so, no share would remain for the son of the body and the rest. Thus, if there happened to be sons of twelve descriptions to inherit an estate of fifteen *suvernas*: and five *suvernas* were given to the son begotten on the wife *by a kinsman*: three and three-quarters to the son of an appointed daughter; three to a son made *by adoption*; and two and a half to the son of concealed birth; something more than two *suvernas* ought to be given to a son rejected *by his natural parents*: but this cannot be made good. What then would be the situation of the rest? It should not be said, that, dividing the whole of the wealth into three parts, the son of a wife may take one; and next, dividing the residue into four parts, the son of an appointed daughter may take one such part; and the partition may proceed in this manner. For, after the last, namely, the son by a *'Súdra*, has taken,

* The first verse, a part of which has been already quoted at v. 211, is cited at length in this place, the rest are occasionally quoted in subsequent sections:—I insert the whole for a general view of the shares allotted to the different sons, combining the dispersed quotations, and correcting them from the *Calpa druma*, where the text is cited at full length. T.

his thirteenth share, there would be no person to take the remainder, nor any fixed rule to determine the share of a son begotten in lawful wedlock: and if the son of the body take that residue only, his share would be very small. Nor should it be argued, that, after the death of the father, the son begotten in lawful wedlock succeeds to the whole estate, but shall give the other sons, if such there be, the shares which the law assigns to them: but, if there be no son of the body, the son begotten on a wife by a kinsman shall take one part out of the three, and the *collateral* heirs shall take the residue; or if there be sons of other descriptions, shares shall be allotted to them, as ordained by the law, out of that residue. *On the contrary*, if there be sons of every description, the rest have no title to any part of the estate, the whole of which is in the first place taken by the son of the body. The seeming difficulty is thus reconciled: if there be a son begotten in lawful wedlock, he alone shall take the whole: but an only son of another description being left, that son, if he were begotten on the wife by a kinsman, shall take one part out of three; if he be the son of an appointed daughter, a fourth part. Such is the order of proceeding. But if there be sons of many descriptions, the texts of SANC'HA and LIC'HITA and the rest (CLXXXVI, CCXLVII, &c.) are applicable instead of the present text.

The estate shall be divided into ten parts for these sons (*namely for those mentioned in the text* CLXXXVI 2, See v. CCXLVII): two shares must be allotted to the father; two to his son begotten in lawful wedlock; three to the son begotten on his wife by a kinsman, and to the son of his appointed daughter, and one each to the *three* others. The first term in the text (*vicalpa* or alternative) *here* relates to the rule of partition.

The *Retnácara.*

Kinsmen are those who belong to the same race, and who share the duty of offering funeral cakes and water; heirs are such as participate in the estate. The law-giver himself explains the words "kinsman" and "heir," "one who belongs to the same race with his father and paternal grandfather, &c." The paternal grandfather is mentioned for the sake of his estate *which is to be divided*, and for the sake of the *párvana* and *śráddha* which are to be performed. The distribution of ten shares is made by the father for the property left by the paternal grandfather. But after the death of the father, his own acquired property, and, *in his lifetime*, the residue *of it*, after he has taken a considerable part for himself, must be divided into eight shares, of which two belong to his son begotten in lawful wedlock; one and a half to the son of his wife begotten by a kinsman; one and a half to the son of his appointed daughter; (*for* it is suggested, that partition must be made without admitting any disparity between these two:) and one share each shall be allotted to the rest, namely, to the son by a woman twice married, to the son of a young woman unmarried, and to the son of concealed birth. What becomes of the son given, the son made *by adoption*, and the rest? It is inferred from the text, that food and raiment only shall be allotted to them: and this must be understood when the son given and the rest are not of equal class *with their adoptive father*.

But MISRA remarks, that 'MENU and all other lawgivers declare the 'son begotten in lawful wedlock to be heir of the whole estate, although 'there be sons of other descriptions; the same legislators also mention the 'allotment of shares to those *other* sons: this seeming contradiction must 'be reconciled by saying, that if the son of the body be virtuous, he alone 'shall succeed to the whole estate; but if he be deficient in good qualities,

'and the rest be virtuous, the estate shall be distributed in the mode 'proposed.' That is liable to objection; for no specific share is mentioned in the *Brahme purána*, for a son begotten in lawful wedlock but deficient in virtue; and there is no difficulty in explaining the phrase, "shall enjoy the whole estate" (CCXVII), as signifying that he shall take a full share. "If there be many similar *claimants*, all share the estate." This shall be *hereafter* discussed.

"Claim the family *of their adoptive fathers*" (CLXXXIV 2); they belong to the same race; they perform the duties incumbent on a son, offering the funeral cake and water and so forth, and are therefore described as claiming *the family of their adoptive fathers*. The son of an unmarried girl and the rest are here described as claiming the family, to forbid their participation in the estate, if there be any one of the others, namely, the son begotten in lawful wedlock and the rest *who are mentioned in the first text*. They shall have a fourth part of the estate, *on a partition made* during the life of the father, if there be no son of the body or other *son of the first series*: but, if the father decease leaving no son born in lawful wedlock, they severally succeed to the whole estate in *regular* order. The *Retnácara*.

In the order specified in the same text; for he has not mentioned whether the order be that of the words or of the sense; but since legislators differ on this point, the order specified by them cannot be here adduced.

The form of partition is as follows: when the distribution is made by the father, his son born in lawful wedlock shall take a full share; the son begotten on his wife by a kinsman, and other sons *of the first series*, shall take a third part of a share; the son of an unmarried girl, and others *of the second series*, shall have food and apparel only. But if there be no son of the body, the son of the wife shall have a full share, and a son given and the rest shall take the third part of a share, but the son of an unmarried girl and the rest shall have a maintenance only. Should there be no son *of the first rank* including one of concealed birth, then the son of an unmarried girl and the rest, if such there be, shall all take a fourth part; consequently the father shall have eight times as much, *that is, double what is allotted to the son rejected*. But the father being dead, the son of a wife begotten by a kinsman, and other sons of the first series, shall have a share equal to a third part of what is allotted to the son begotten in lawful wedlock; and the son of an unmarried girl, and others *of the second series*, shall obtain a maintenance only: but, if there be no son of the body or the like, the first in rank among sons of the second series, who do survive, shall take the whole estate; but another *inferior* son shall have a share equal to a third part. The son of a wife begotten by a kinsman does obtain a third part, if there be a son of the body: but whence is it deduced, that the son of a pregnant bride shall have a third part, if the son of an unmarried girl be *the principal heir?* His third share is deduced from the text of DÉVALA (CXC 4), such participation not being mentioned by GÓTAMA. It should not be argued, (because GÓTAMA describes the sons *of the first series, from the son begotten in lawful wedlock*, down to the son of concealed birth,* as inheriting property; and the son of an unmarried girl, and others *of the second series*, as entitled to a fourth part *of the paternal estate*, on failure of sons begotten in lawful wedlock and the rest;) that they ought to share equally. Were it so, the observation in the *Retnácara*, that they severally

* Down to the son rejected. See the text CLXXXIV.

succeed to the whole estate in *regular* order, would be impertinent. It is nowhere seen, that a son of a wife begotten by a kinsman, and other inferior sons, share equally with the son of the body; for that is *virtually* denied *by a text above cited* (CXC). Or the text of the *Brahme purána* may be only applicable during the life of the father, in this mode: when partition of property left by the paternal grandfather is made by the father, a *share equal to a* third part of half what is received by the father shall be allotted to the son of his wife begotten by a kinsman, a fourth part of such a moiety to the son of an appointed daughter, and one such moiety to his son begotten in lawful wedlock; partition may proceed in this form: and the phrase "shall enjoy the whole" may signify, shall have a full share, *the father receiving two shares*. But the father being dead, the son begotten on his wife by a kinsman shall have an allotment equal to a third, and the son of his appointed daughter one equal to a fourth, part of what is received by the son begotten in lawful wedlock; and the partition may proceed in this mode. For instance, if the father receive twenty-four *suvernas*, the son of his body shall receive twelve; the son of his wife begotten by a kinsman, six; the son of his appointed daughter, four; and the son made *by adoption*, three *suvernas*, and so forth: or the son of his wife shall receive four; the son of his appointed daughter, three *suvernas*, and so forth.

If there be no son begotten in lawful wedlock, but a son of the wife begotten by a kinsman, a son of an appointed daughter, and a son made *by adoption*; in that case the son of the wife inheriting the whole estate as next in succession, what share belongs to the son of an appointed daughter? It should not be said, he shall have a fourth part only, as suggested by the text (CCXVII). That must be understood, from the subject of the ordinance, to mean only the fourth part of the allotment given to the son begotten in lawful wedlock. Nor should it be said, that, the son of the wife being advanced to the place of the son begotten in lawful wedlock, and the son of an appointed daughter and the rest being each raised one step, they shall receive a third part and so forth. There is no law to that effect. To the question proposed, the answer is: the same disparity of allotments which took place between a son of the wife and a son of an appointed daughter when there was a son of the body, shall also take place in the present instance: for example, a share one-third less than the allotment given to the son of the wife shall be assigned to the son of an appointed daughter; six *suvernas* being received by the son of the wife, a share diminished by one-third (or two *suvernas*), and consequently amounting to four *suvernas*, *shall be allotted to the son of the appointed daughter*. The same should be understood in respect of a son made *by adoption*, and the rest; and a similar method may be observed, when the son of an appointed daughter, or another son of lower rank, is principal heir.

The son of an appointed daughter is described in the *Brahme purána* as inferior in rank to the son of a wife begotten by a kinsman; and this must be understood when the son of the wife is procreated by a man of the highest rank. He is described by YÁJNYAWALCYA as superior to the son of the wife; and this must be understood when the appointed daughter is given to a bridegroom of the highest rank. If both are derived from the highest origin, and are both equal in merit, it must be held reasonable, that a third or a fourth part should be equally allotted to each. The text of SANC'HA and LIC'HITA (CCXLVII) is applicable when both are derived from the highest origin, and are equal in merit; but the form of distribution is there

propounded, supposing no disparity between them. The very low place assigned by GÓTAMA to the son of an appointed daughter, is proportionate to the decline of virtue. It is observed in the *Retnácara*, that this allotment of a fourth part (CLXXXIV) supposes the son to be transcendently virtuous; the *Brahme purána* supposes them imbued with bad qualities. But in what respect is the rank, or the allotment, ordained by GÓTAMA for the son of an appointed daughter, superior to that which is directed in the *Brahme purána?* for the allotment of a fourth part is only ordained on failure of sons begotten in lawful wedlock, and the rest, but is allowed in the *Brahme purána*, although there be a son of the body or the like, since the case of failure of sons begotten in lawful wedlock is not there mentioned, and precedence is there allowed to the son of the appointed daughter above the son made *by adoption*. It should not be argued, because the son of the body is mentioned as taking the whole succession, that the son of the wife shall only have a third part, and the son of an appointed daughter a fourth, when partition is made by a father who has no son of his body. It is absolutely necessary to limit the meaning of the phrase "shall enjoy the whole;" else the father would be deprived of all participation. Accordingly DÉVALA says, "such among them as are of the same class shall have, as their share, one-third part of the property" (CXC 4). Having premised "should a son of the body be afterwards born," he propounds a short rule of general import concerning their allotments. It should not be affirmed, that this text bears a different import because the order varies. Partition, varying with different degrees of virtue, being admitted for the sake of the coincidence with other texts, the son given and the rest, being deficient in virtue, would have a third share, if there be a son of the body; and the same sons, being eminent by their good qualities, would have no share; which would be an unjust disparity. Nor should it be affirmed, that the text of the *Brahme purána* relates to the son of a wife begotten by a kinsman, and other sons unequal in class. CÁTYÁYANA declares, that sons unequal in class are only entitled to food and apparel.

CCXVIII.

CÁTYÁYANA:—A son of the body being born, the adopted sons of the same class take one-third as their portion; but those of a different, *that is, of a lower* class, are entitled only to food and raiment.

Is not the particular distribution, as mentioned in the *Brahme purána*, inconsistent with the allotment of one-third part, as ordained by DÉVALA and CÁTYÁYANA? It should not be said, that the precepts of DÉVALA and CÁTYÁYANA relate to the case of a virtuous son, and the *Brahme purána* to the case of a son deficient in virtue. Were it so, the son of the wife and the rest being naturally equal, it would have been said, "a virtuous son shall obtain a third part as his share," to show the distinction to be founded on good qualities, instead of saying, "the son of a wife begotten by a kinsman shall obtain a third part as his share." To the question proposed some reply, a third part is mentioned as the principal allotment, for the sake of illustration. Consequently the general rule of partition must be drawn from the *Brahme purána*: the same, to whom the first rank is assigned in the *Brahme purána* on account of his eminent virtue, is placed in a middle or low rank by another author, supposing the case of his deficiency in virtue. Hence the same share which is ordained for a son given and the rest, on the supposition of their possessing good qualities, is allotted to the son of

an unmarried girl and the rest, if they possess such good qualities. Such is the difference in the opinions delivered by various Sages. A full share must be therefore allotted to the son of the body; participation must be allowed to the son of an appointed daughter; a fourth part of such a share must be given to the son of a wife begotten by a kinsman; a fifth, to the son of a young woman unmarried; a sixth, to the son of concealed birth; a seventh, to the son rejected by his natural parents; an eighth, to the son of a pregnant bride; a ninth, to the son by a woman twice married; a tenth, to the son given; an eleventh, to the son self-given; a twelfth, to the son made *by adoption;* a thirteenth, to the son bought; and a fourteenth, though not expressly mentioned, to the son by a *Súdra,* else he would be excluded from participation: such is the intention of DÉVALA. The meaning of other legislators, say these lawyers, should be similarly explained. VACHESPATI also remarks, that other lawyers refer the allotment of a third part, ordained by CÁTYÁYANA, to the case of a son given, who is transcendently virtuous, because it coincides with the allotment directed in the *Bráhme puráṅa* for the son of a wife begotten by a kinsman. Hence the rest must certainly have different allotments, not all a third part. Consequently, the remark in the *Retnácara,* that this allotment supposes sons transcendently virtuous, must relate to the son of a young woman unmarried, and the rest.

CCXIX.

HÁRÍTA:—Dividing the property, let a twenty-first part be given to the son of a young woman unmarried; a twentieth, to the son by a woman twice married; a nineteenth, to the son of concealed birth; an eighteenth, to the son of a wife begotten by a kinsman; a seventeenth, to the son of an appointed daughter; and the remainder, to the son of the body.

If the father be dead, a twenty-first part of the whole property shall be given to the son of a young woman unmarried; but in his lifetime, a twenty-first part of the share allotted to the son begotten in lawful wedlock. Such is the form of partition ordained by HÁRÍTA. The term employed (*múshyáyaṅa*) is explained in the *Retnácara,* son of concealed birth. These sons are mentioned by HÁRÍTA, as occupying the first rank (CLXXXVII).

LACSHMÍD'HARA explains the terms of the text last cited, "heirs to kinsmen;" that is, they take the heritage of collaterals, such as paternal uncles and the rest. The term which occurs in that text (*sahasádrishta*) signifies a son made *by adoption.* This law-giver allows them food and raiment only, on the supposition of their belonging to a lower class, or on that of their great deficiency in virtue.

According to this legislator, the son of an appointed daughter is second in rank, for he is so placed in the allotment of shares. By one authority he is placed in a very low rank, supposing the case of his great deficiency in good qualities. Consequently, if the son of a young woman unmarried, or the son made *by adoption,* be virtuous, then, the son of an appointed daughter, being very deficient in good qualities, shall not succeed to the whole property; but on failure of sons, *from the son of the body,* to the son by a twice-married woman, he alone shall succeed to the estate. Such is the opinion of GÓTAMA (CLXXXIV). Other opinions must be reconciled in a similar manner. It would be useless to investigate the distinctions of degrees of virtue, which must depend on very subtile reasoning; such an

enquiry would *unnecessarily* enlarge the volume, and is therefore omitted. But, in fact, the son of an appointed daughter is either second or third in rank, according to the degree of virtue by which the son of the wife begotten by a kinsman is distinguished; for he is so placed by Menu, Yájnyawalcya, Náreda, Vrihaspati, Baudháyana, Vishnu, Hárita, Dévala, Vasisht'ha, Sanc'ha and Lichita, Yama, the *Brahme purána*, and the rest. Consequently, if there be left both a son of the wife begotten by a kinsman, and the son of an appointed daughter, he alone who is virtuous shall inherit; but if both be equally endued with good qualities, *the son of* the appointed daughter shall alone inherit, for he was not begotten by an adulterer. It should not be argued, that the son of the wife, being produced from the man's own field, is more intimately connected *with his adoptive father*. The father has not lost his right to obtain offspring through his appointed daughter; and the son of that daughter is *mediately* produced from the man's own field, *the mother of that daughter*. Nor should it be argued, that the son of that wife is begotten by one duly appointed, but the son of an appointed daughter is begotten by a stranger not expressly authorized; and therefore the son of the wife is more intimately connected with his adoptive father. When the appointed daughter was given in marriage, the son-in-law was nominated to raise up offspring; but the son of an appointed daughter, described by Menu, inherits as a son's son. This brief exposition may suffice.

CCXX.

Menu: á—Between a son's son and the son of *such* a daughter, there is no difference in law; since their father and mother both sprang from the body of the same man.

β' By that male child, whom a daughter thus appointed, either by an implied intention, or a plain declaration, shall produce from an husband of an equal class, the maternal grandfather becomes in law the sire of a son's son; let him give the funeral cake, and possess the inheritance.*

γ' The son, however, of *such* a daughter, who succeeds to all the wealth of her father dying without a son, must offer two funeral cakes, one to his own father, and one to the father of his mother.

CCXXI.

Sanc'ha and Lic'hita:—Between a son, and the son *of such an appointed* daughter, there is no difference.

The son of an appointed daughter being considered as a descendant in the male line, there is no difference between a son's son and the son of *such a* daughter; for, the appointed daughter being considered as a son, her male issue is held similar to a son's son. It is hereby intimated, that, as a son's son succeeds to the heritage on failure of the son, so does the male child of an appointed daughter succeed on failure of her; and he shall take a share in right of his mother, if there be a son of another description, or if there be

* Between this and the following verse, the hemistich, which has been inserted at CCIX. is again cited. T.

another appointed daughter. This text is inserted by JÍMÚTAVÁHANA and the rest under the title of Succession to the estate of one who leaves no male issue, as showing generally, that the son of a daughter shall take the estate of a maternal grandfather who leaves no son: this will be discussed in its place.

"Appointed by an implied intention;" by no express declaration that she is selected to raise up a son to her father, but thus appointed by an act of the mind unexpressed. "By a plain declaration," declared in express words to be thus appointed. "From an husband of equal class," mentioned to exclude a husband of inferior class, for it would be inconsistent with common sense to exclude one of superior class: and it is recorded, that the daughters of DACSHA (lord of created beings, and son of PRACHÉTAS, the descendant of a king named PRÏT'HU,) were married to CASYAPA, and appointed to raise up issue to their father.

CCXXII.

MENU:—In this manner DACSHA himself, lord of created beings, anciently appointed all his fifty daughters to raise up sons to him, for the sake of multiplying his race:

2. He gave ten to D'HERMA, thirteen to CASYAPA, twenty-seven to SÓMA, king *of Bráhmanas and medical plants*, after doing honour to them with an affectionate heart.

"In this manner;" in the form for appointing daughters to raise up sons to their fathers: that shall be hereafter delivered.—It should not be objected, that this DACSHA is he who sprang from the toe of BRAHMÁ. He is not recorded in the *Srí Bhágavata*, as giving his daughters to CASYAPA, but as giving one to SIVA.* Nor should it be objected, that the daughters of DACSHA, who sprang from BRAHMÁ, are mentioned in other works as married to CASYAPA, which therefore coincides with the institutes of MENU. Since the *Bhágavata* may serve to reconcile the apparent contradiction, it would be improper to reject its authority.

"Let him give the funeral cake, and possess the inheritance," (CCXX β′); 'as a son's son,' must be supplied. The gift of the funeral cake is mentioned under the title of Inheritance, to show that succession to the heritage is founded on the benefit conferred by offering the funeral cake. The consequence of this will be explained under the head of Succession to the estate of one who leaves no male issue. "Dying without a son" (CCXX γ′): this is explained in the *Retnácara*, and by CULLÚCABHATTA, leaving no son by himself begotten. That is pertinent on the supposition that an appointed daughter is considered as a son. "Who succeeds to all the wealth of *his* father" (ibid); of his natural father: the legislator proceeds to mention the benefit, in right of which he shall inherit the estate. Because he offers funeral cakes both to his own father and to his maternal grandfather, therefore shall he succeed to their wealth. But if his natural father leave another son, that heir is first entitled to perform the obsequies,

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* This DACSHA had sixteen daughters by PRASUTÍ, daughter of MENU. He gave thirteen to D'HERMA, one to AGNI, one to sires collectively, and to one SIVA. See *Bhágavata*, Book 4. The allegory in the marriages of his daughters, and in the fruit of those marriages, is particularly obvious. T.

and possess the inheritance: hence this son *of an appointed daughter* is a secondary and nominal son of one who leaves no *other* male issue. However, the daughter's son alone shall perform the obsequies, and succeed to the estate for his maternal grandfather, who leaves no male issue *by sons*. Such is the exposition approved by CULLÚCABHATTA. It is reasonable that he should only inherit if there be no sons of any other description; but nothing has been expressly said by CULLÚCABHATTA on this point. The author of the *Pracáśa*, reading the first hemistich of the last verse first* (CCXX γ), expounds "father," maternal grandfather; considering the maternal grandfather as *adoptive* father of the son produced by an appointed daughter, or explaining the word "father," from the relation of the terms, as signifying the father of the appointed daughter, he affirms that the phrase, "shall inherit the whole of the estate of *her* father," is a repetition. But UDAYACARA holds, that this last hemistich is delivered as the reason *of the precept*: because the son of a daughter shall obtain the estate of her father, who leaves no son, therefore shall the son of an appointed daughter also obtain the estate of such an ancestor. CHANDÉSWARA fully concurs in that opinion: but his gloss, 'leaving son by himself begotten,' is liable to objection; for a daughter's son does not in general succeed to the estate if there be any adopted son, and there is consequently no such general right, on which that exposition can be grounded.

CCXXIII.

MENU:—Not brothers nor parents, but sons, *if living or their male issue*, are heirs to the deceased; but of him who leaves no son, *nor a wife, nor a daughter*, the father shall take the inheritance; and, *if he leave neither father nor mother*, the brothers.†

On this CULLÚCABHATTA thus comments; neither uterine brothers, nor parents, but, on failure of sons begotten in lawful wedlock, the son of a wife begotten by a kinsman, and other secondary sons, are heirs to the *deceased* father: this is meant, for the right of a son begotten in lawful wedlock, is deduced from another text (CCXV). But of one who leaves no son properly or improperly so called, nor a wife, nor a daughter, the father shall take the inheritance, this text is placed after describing sons of twelve kinds. In effect there is no variance.

CCXXIV.

VRĬHASPATI:—As sons, so do the daughters of men, spring from successive bodies: how then should any other human being inherit the property, while a daughter exists?

2. Married to a man of equal class, virtuous, delighting in submission, she shall inherit her father's estate, whether she be expressly appointed or not, *to raise up male issue to him.*

3. As she becomes owner of her father's wealth, even though kinsmen exist, so does her son claim the estate of his mother and maternal grandfather.

* That is, he transposes the first hemistich of MENU, Chap. IX, v. 132, and last hemistich of v. 131. See translation of MENU, p. 184. T.

† Partially quoted in this place: the last hemistich is cited after v. 424. T.

As the father sprang from the paternal grandfather, and the son from the father, so does a daughter likewise *spring from her father, who proceeded from her grandfather;* how then should any other, the brother of the deceased or the son of that brother, inherit the property, for the brother of the deceased, or other collateral, sprang from the grandfather of that daughter, but not from her father. "Married to a man of equal class;" not married to a man of inferior class, contrary to law. "Whether appointed or not;" appointed by a plain declaration or implied intention: another interpretation will be noticed under the head of Succession to the estate of one who leaves no male issue. This precept is applicable when an appointed daughter is treated like a son, as is suggested by MENU; for the precepts coincide, since VRĬHASPATI describes her as similar to a son: but if the son of an appointed daughter be considered as the adopted child of her father, he is heir in the first place. Even though kinsmen, such as brothers and the rest, do exist, her male child is capable of inheriting his mother's property because he is her son, and his maternal grandfather's property because he is considered as a son's son.

CCXXV.

SANC'HA and LIC'HITA:—The daughter shall take the female property, and she alone is heir to the wealth of her mother's son, *who leaves no male issue.*

The first part will be explained under the head of Succession to the property of one who leaves no male issue. On the latter part, the following gloss is delivered in the *Retnácara:* by offspring is here signified the son of that daughter's mother; if that son, born subsequently *to her appointment,* die, leaving no male issue, that sister alone shall inherit on failure of the mother and father.

The reason is, that she is similar to a brother. But that, it may be said, is liable to objection; for SANC'HA and LIC'HITA consider the son of an appointed daughter, not the appointed daughter *herself,* as the adopted son of her father: how then can she be similar to an uterine brother? The answer is, any son, not expressly mentioned by any one legislator, must be understood by implication. Else he would have propounded the law imperfectly, or another legislator would have asserted more than the law. Accordingly MENU has not expressly noticed partition by a father; but he has said, "the father shall never make an unequal division among them" (XXIX). In like manner it must be inferred, that SANC'HA and LIC'HITA also acknowledge the appointed daughter as an adoptive son, by admitting a different design *in making the appointment.* Then if there be both an appointed daughter and the son of an appointed daughter, which of them shall possess the inheritance or perform the obsequies? The appointed daughter alone, for she was begotten by the man himself on his lawful wife. It should not be objected, that her claim is weaker by reason of her sex. Upon the authority of the law she is truly considered as a son, and her sex is nothing to the purpose. Nor should it be argued, that the son has a superior claim, because he gives the two funeral cakes which must be offered to the late proprietor in the double set of oblations. Were it so, she would have an inferior claim to that of the son given, and to that of any other daughter's son; which is not affirmed by any legislator. This brief statement of the law may suffice.

Art. II.—*On the Appointment of a Daughter to raise up a Son for her Father.*

"He who has no son may appoint his daughter in this manner, to "raise up a son for him," (CCXII). "Who has no son," is not mentioned as a requisite condition, but is merely descriptive; for the father of a son has no *such cogent* reason for appointing his daughter to raise up issue for him. *Still however he may so appoint his daughter*: accordingly it is well known, that Menu, son of the self-existent, and himself the propounder of this very text, appointed his daughter to raise up issue for him, although he had sons. That is mentioned in the *Srí Bhágavata*, "O king!" (see the verse cited from the *Bhágavata* in the preceding article); the speaker thus addresses the king Pericshit. On reading the word 'king' in the first case, it relates to the agent in the sentence, namely Menu, sprung from the self-existent; for he was then lord of the earth. He gave his daughter Acúti to Ruchi, son of Brahmá, lord of created beings, "although she had brothers;" for she had two brothers, Priyavrata, and Uttánapáda, both kings. "Satarúpá" was wife of Menu:

Or the term "who has no son" (CCXII) may signify, who is absolutely destitute of male issue. "For the purpose of performing my obsequies" (CCXII); the term (*swad'há*) signifies obsequies, for the *Véda* directs that word to be used with rice offered to progenitors: the meaning therefore is, for the purpose of performing the *śráddha*. Is not this appointment useless, since all sons of daughters perform obsequies for their maternal grandfathers? The term must be here understood in the sense of principal *śráddha*; for it would be otherwise unmeaning. Or the word "mine" may signify my race; and "male child" may signify descendant, such as a son or remoter descendant by males: "from her" bears a causal sense. Consequently the meaning is, that descendant who shall proceed from her shall be mine, sustaining my lineage, and performing obsequies. It follows, that the daughter, being the root whence that child springs, is included in her father's lineage; and a son's son is a descendant, as well as a son. By the effect of such an appointment, the daughter belongs, as an adopted son, to her father's lineage: any other daughter passes into the family of her husband, but this daughter retains her claim to the family of her father.

Upon the reason abovementioned, the expression "who has no brother," in the text of Vásisht'ha (CCXVI) is merely descriptive; for it is not requisite to her filiation. Common sense shows, that she may be appointed to raise up a son, without being decked with ornaments; for that is not requisite to filiation. The son of the appointed daughter being alone mentioned as an *adopted* son, does it not follow, that, according to this opinion, the appointed daughter is not considered as a son? No; for that would contradict the precept, "an appointed daughter is equal to the son of the body" (CCIII). The second word, "son," therefore signifies descendant; and a son's son is a descendant, as well as a son. Or by this form of appointment the son of the appointed daughter solely becomes a son: that the appointed daughter *herself* may become a son, another form of appointment must be used. Both must be considered as intended by Vásisht'ha; else the precept would be imperfect: his not having expressly mentioned both forms of appointment, is nothing to the purpose; for, a son given not being mentioned in the text of the

Brahme purána (CCXVII), shall he not obtain the same share with others if he possess similar good qualities? *The declaration may run* in this form: "the son who shall be born from her shall be mine;" or other words may be used to the same effect.

GÓTAMA:—He who has no male issue, may appoint his daughter to raise up a son for him, making an oblation to fire, and performing the sacrifice called *prájàpati* (*or* prájàpatya), and declaring, "her offspring shall belong to me:" but, according to some, she may be simply appointed by an implied intention.

"Who has no male issue;" that is, who has no son: the meaning has been already explained. "Making an oblation to fire, and performing the sacrifice called *prájàpatya*;" or performing a single sacrifice with the legal fire, according to the form ordained in the particular *śác'ha* of the *Véda followed by the family;* or, if no perpetual fire be maintained, worshipping in the common form, *he may thus appoint his daughter*. Such is the remark of HERIHERA. Consequently two sacrifices with two fires are chiefly recommended; on failure of that, a single sacrifice with the legal fire: and this concerns such as keep a sacred hearth; but one who maintains not a perpetual fire, may worship in a common mode. "Declaring," signifies proclaiming. "According to some, she may be simply appointed by an implied intention." By saying "according to some," disapprobation is intimated; else the legislator would not have said "declaring, &c." By disapprobation, inferiority is intimated. It is consequently suggested, that a daughter so appointed by an implied intention, is inferior to one appointed by a plain declaration. For this very reason, GÓTAMA has stated the son of an appointed daughter as not having precedence above the son of an unmarried girl and the rest (CLXXXIV). But others have expressly mentioned the son of a daughter appointed by a plain declaration, and have assigned him precedence above the son of an unmarried girl and the rest. According to the degree of good or bad qualities, he must be deemed superior or inferior to the son of a wife begotten by a kinsman. Thus some expound the text. Consequently, an implied intention, and an express declaration, (after performing the sacrifice with fire, and that called *prájàpatya*, or after simple worship,) are the forms of appointing a daughter to raise up a son for her father.

VRĬHASPATI:—GÓTAMA has said, that a daughter is appointed after making an oblation to fire, and performing the sacrifice called *prájápati* (or prájápatya); but others hold, that a girl who was supposed to be a son whilst born in her mother's womb, is an appointed daughter.

"Supposed;" concerning whom it was determined that she shall be an appointed daughter. The *Retnácara.*

Some explain the text, she whom her father supposed to be a son, whilst she was borne in the womb of his wife; in other words, she, of whom it was thought, "this fœtus will be a male child," is an appointed daughter, and equal to a son. Though she be in fact a female, her father does not choose to consider her as such, but attributes to her the rank of a son, according to his wishes. If her father intend, or declare, "her descendants shall be mine, she is called by VRĬHASPATI an appointed daughter: she

is mentioned by VAŚISHT'HA (CCIII) as equal to the son of the body: and such an appointed daughter is intended by MENU. But a daughter who is appointed by a plain declaration after her birth, is meant by DÉVALA and the rest; and her son becomes the adopted child of his maternal grandfather. Different forms are propounded by NÁREDA to place the appointed daughter in the relation of a son, and to place the son of such a daughter in that relation.

Others hold, that a plain declaration, preceded by a sacrifice with fire, and by that called *prájápatya*, is one form, which GÓTAMA himself approves: the same form is mentioned by VRĬHASPATI in the first half of his text. The mere intention is a second form. By the word "mere," an express declaration and the sacrifice are excepted; and that intention is formed as early as the time when the mother's pregnancy becomes known: this second form is not much approved by GÓTAMA; and this same form is mentioned by VRĬHASPATI in the second half of his text.

VISHNU:—A damsel given in marriage by her father *with a declaration in this form*, "the son who shall be born of her shall be my son," is an appointed daughter: and, even though not given according to the form for appointing a daughter to raise up a son for her father, she is considered as such, if she have no brother, *and were appointed by an implied intention.*

"With a declaration" must be supplied in the text. Even though not appointed in that form, *she is considered as an appointed daughter*. On this some argue from the coincidence of the phrase with the text, "let a man espouse a young girl who has a brother, &c.," that every son of a daughter who has no brother is the son of an appointed daughter, and first in dignity; the son of an appointed daughter, as described by GÓTAMA, is inferior to him. That is wrong; for doubt is mentioned in the text of SANC'HA and LIC'HITA (CCIV) as the reason for not marrying a damsel who has no brother; but if there be no doubt, such a marriage may be contracted: it follows, that she does not become an appointed daughter. Hence the expression, "even though not given in the form for appointing a daughter to raise up a son for her father," must be explained, even though not given with an express declaration; but "appointed by an implied intention" must be supplied in the text, because it has the same import with that of GÓTAMA. "Who has no brother," is merely descriptive, suggesting the appointment by an implied intention: in general, such an intention can only be entertained by one who has no son.

The *Brahme purána*:—The daughter of one who has no male issue, being appointed a son by an act of the mind, or anywhere appointed in the presence of the king, of sacrificial fire, and of kinsmen.

2. Or *supposed to be a son* so long as she was in her mother's womb, or given after the death of her father to a bridegroom with a nuptial present for that express purpose, must be considered as an appointed daughter.

3. Such a daughter shall take an equal share of the paternal inheritance.

"Appointed a son by an act of the mind," is one mode. The appointment mentioned by MENU, and made before the king, before the sacrificial

fire, and before kinsmen, *in this form*, "she is an adoptive son, her progeny shall be mine," is a second mode, preferable to the former: in the presence of the king, her father must declare, "she is appointed to be my son;" he must make the same declaration before the sacrificial fire (that is, while performing a (sacrifice), and with holy texts; he must also make the same declaration in the presence of kinsmen. "Supposed to be a son so long as she was in her mother's womb," is a third mode. Being given to a bridegroom with a nuptial present, at the same time that her appointment is proclaimed, a daughter, even though given by another person after the death of her father, is legally appointed: consequently a plain declaration to the bridegroom, preceded by a nuptial present, is a fourth mode. According to this opinion, the difference is evidently founded on the different form of appointment to place the appointed daughter or her child in the relation of an adopted son. The appointment by an act of the mind is the same with the second form, mentioned by GÓTAMA. His first form is placed second in this text. Hence, say these lawyers, the texts of GÓTAMA and VRĬHASPATI do not bear the same import.

But others affirm, that an appointed daughter, who was supposed *to be a male child* so long as she was in her mother's womb, is considered as a son. They expound the text as follows: a daughter, mentally treated as a son so long as she was in her mother's womb, or appointed in the presence of the king, of sacrificial fire, and of kinsmen, and given by her guardian, after the death of her father, to a bridegroom, with a nuptial present delivered, or not delivered but promised, is an appointed daughter. The first particle "*vá*" must bear the affirmative sense; the second, a disjunctive sense; and the third must signify 'also:' for it is explained by AMERA, as comparative, disjunctive, affirmative, and connective.* Consequently that daughter, who was supposed to be a male child from the time when pregnancy became known, or who is proclaimed *to be an appointed daughter*, before the king, before sacrificial fire, and before kinsmen, and who is given to a bridegroom, by whom a nuptial present has been accepted, or by whom it has been generously refused, is an appointed daughter. She who passed through this whole ceremony, shall have an equal share with the son of the body; but if there be any deviation in the essential points of this formality, she is reduced accordingly to a lower rank. It must be understood, that she is previously proclaimed 'a daughter appointed to be a son.' The allotment of an equal share, as here mentioned, is admitted by MISRA, by the author of the *Dípacalicá*, and the rest. But, according to others, the meaning is, that she shall take a full share, if there be no son of the body. By acceptance of a nuptial present, or by generous acceptance of the damsel without such a present, the natural father *of her child* has relinquished his claim to the son *born of her*. This brief explanation may suffice.

But it should be remarked in this place, that the appointed daughter is considered as a son, that she may take the inheritance; her child is considered as an adoptive son, that he may offer the double and single sets of oblations to ancestors. This is in every respect accurate. Let it not be objected, that there is no ground for this selection in an ambiguous case. A woman is incapable of offering the double set of oblations. There is no difficulty on this exposition.

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* AMERA is here misquoted: he explains *vá* as comparative and disjunctive, signifying as and or. Some other work has been erroneously quoted in his name. T.

SECT. IV.—*On the Son of a Wife.*

He is third in rank according to YÁJNYAWALCYA; for, after mentioning the son of an appointed daughter as second in rank, he adds, "the son of a "wife is one begotten on an appointed wife by a kinsman sprung from the "same original stock with her husband, or by another person duly autho- "rized" (CC). "Sprung from the same original stock" is explained in the *Retnácara*, sprung from the same family. "By another person;" by a man of superior class. A man of equal class, but of another family, is thus excluded; hence no son of a wife can be raised to a *Bráhmana*, unless by a man of the same family: if this be objected, the answer is, the consequence is admissible. It is accordingly said in the *Dípacalicá*, a son begotten on the appointed wife of another who has no male issue, by a kinsman within the relation of the funeral cake, or by a man of superior class sprinkled with clarified butter, and observing the other forms consequent to the appointment, is the son of a wife.

CCXXVI.

MENU:—Even the son of a wife *duly authorized*, not begotten according to the law *already propounded*, is unworthy of the paternal estate, for he was procreated by an outcast.

"Not begotten according to the law *already propounded;*" begotten in breach of the rule which appoints either a kinsman related by the funeral cake, or a man of superior class. "He is unworthy of the paternal estate;" consequently he does not become in law the son of a wife. "For he was procreated by an outcast;" the degradation of his natural father is hereby intimated.

CCXXVII.

MENU:—Either brother, appointed for this purpose, who deviates from the strict rule, and acts from carnal desire, shall be degraded, as having defiled the bed of his daughter-in-law, or of his father.

"The strict rule;" that under which a kinsman or a man of higher class raises up male issue. Does it not appear, from the expression "as having defiled the bed of his daughter-in-law or of his father," that either brother abovementioned, and no other person, does approach the wife: how then can the strict rule be violated, since both are kinsmen? and why is it said they shall be degraded? A man of equal class being mentioned in the text of VISHNU (CLXXXV), one of inferior class is excepted: consequently, if either brother, being inferior in class, though related by the funeral cake, approach the wife, he is degraded. But CULLÚCABHATTA expounds "not begotten according to the law," begotten without observing the forms prescribed, such as being sprinkled with clarified butter and so forth. "Who deviates from the rule," he considers as bearing the same meaning. In this mode, the expression "appointed for the purpose," may be fitly taken in a literal sense.

CCXXVIII.

MENU:—Sprinkled with clarified butter, silent, in the night, let the kinsman thus appointed beget one son, but a second by no means, on the widow *or childless wife*.

"Thus appointed;" the form of appointment is, "beget a son on this woman;" or, addressed to the woman, "obtain from that man the procreation of a son." According to this opinion, it must be affirmed that the principal object fails by the want of some formality, such as being sprinkled with clarified butter and so forth. The principal object being thus unattained, it must be examined whether the begetter be degraded, or the son begotten be incapable of inheriting. The following text shows, that the son of a wife should be obtained through a kinsman:

CCXXIX.

MENU:—On failure of issue by the husband, *if he be of the servile class*, the desired offspring may be procreated, either by his brother or some other *sapinda*, on the wife, who has been duly authorized.

The brother of her husband is named in the first instance; on failure of him, another kinsman related by the funeral cake. The desired offspring may be obtained, by a wife duly authorized by her spiritual parents, from a brother of her husband, or from another *sapinda*. "Desired offspring" being mentioned, if a child unfit for the duties *incumbent on a son* be produced, it is permitted to repeat the intercourse for the purpose of obtaining such a son as is to be desired, namely, one capable of his duties. Such is the interpretation of CULLÚCABHATTA. Consequently the term "one," in the expression "beget one son," must signify one male child fit for the duties incumbent on him.

The third twice-married woman, mentioned under the title of Loans and Payment,* is different from this woman: however, she may be considered as a twice-married woman of that description; for the word "given," in the text alluded to (Book IV, v. CLVIII 4), may signify 'entrusted for the procreation of a son.' This sense must be deduced from reasoning: since she is not a woman wilfully libidinous, therefore, being one who had a different husband before, she must fall within the description of a twice-married woman.

"The second is the son of a wife begotten by a man of equal class on a "wife duly appointed" (CLXXXV); a man of equal class here denotes one not inferior in class. Accordingly the procreation of a son by the holy VASISHT'HA, for SAUDASA a king of the solar race, which is familiarly known from the *Maháb'hárata* and other works, is vindicated. Alluding to this, the author of the *Dípacalicá* has said, 'or by a man of superior class.'

VISHNU has allotted the second place to the son of a wife, on the supposition of his superior good qualities, as has been already explained. The third place is allotted to the son of an appointed daughter; for that is shown by the order delivered in the *Retnácara*, where it is said, 'after premising 'the son of the body, the son of a wife, of an appointed daughter, of a twice-'married woman, or of a young woman unmarried, the son of concealed 'birth, the son of a pregnant bride, the son given, bought, self-given, or 'rejected, and the son anyhow *irregularly* produced.'

CCXXX.

VASISHT'HA, after mentioning the son of the body:—On failure of him, the second shall inherit, namely, the son of a wife duly authorized.

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* I have inserted the text in the fourth book. It is cited in both places. T.

The text must be supplied, "begotten on a wife duly authorized." "On failure of him," signifies, on failure of one begotten in lawful wedlock. Consequently, on failure of sons begotten in lawful wedlock, the son of a wife is competent to perform the *śráddha*, and shall take a full share. Such is the opinion of VAŚISHT'HA: and that is accurate.

CCXXXI.

MENU:—He who was begotten, according to law, on the wife of a man degraded, or impotent, or disordered, or *deceased*, after due authority given to her, is called the lawful son of the wife.

The term used in the text (*talpa*) is explained by AMERA, 'bed, brick-house, wife.' "On the wife of a man degraded;" if an outcast himself begot a son, he could not inherit, because he likewise would be degraded: but, like an impotent man, an outcast may authorize his wife *to conceive by another*, provided she have not been enjoyed by the degraded man; else, since she would be degraded, her son also would be an outcast. The particle "or" is connective, and refers to the word "deceased," *which is understood*: consequently, he who was begotten on the wife of a man deceased, after due authority given by her husband *in his lifetime*, or by spiritual parents, *after his death*, is also called the lawful son of the wife. "According to law;" sprinkled with clarified butter and so forth. The *Retnácara*.

CCXXXII.

MENU:—He who keeps the *fixed and moveable* estate of his *deceased* brother, maintains the widow, and raises up a son to that brother, must give to that son, *at the age of fifteen*, the whole of his brother's *divided* property.

A share allotted to brother's wives, although they have no sons, is mentioned by VAŚISHT'HA (CXVII); the brother, by whom that allotted share is kept, and by whom the widow is maintained, and who begets a son on that widow, must deliver the property to him: but if no son shall be born, all the brothers shall take it *as joint property*, This will be explained under the title of Succession to the estate of one who leaves no male issue.

If the wife of the eldest brother be so situated, shall, or shall not, the portion of an eldest son be allotted? The answer is, since the share is set apart, that it may be ultimately received by the nephew, the precept delivered in a text formerly cited (LXXVI 1) must be here adduced. But if authority be given in this form, "raise up a son by any suitable man," then, since the son may possibly be procreated by another man, a share should be set apart with the portion of an eldest child; and if that share be kept by any one younger brother, and the son be procreated by him, still he shall take an allotment, which includes the portion of an eldest child because it had already become his. Thus some lawyers solve the question. But that is wrong; for, one who is yet unborn can have no vested title; and, during the interval, that wealth is similar to unowned property. The wife's son, already born, cannot take the portion of an eldest child; he shall therefore only receive an equal share. But CULLÚCABHATTA considers this text as relating to divided brethren: consequently, when a separated brother dies, his property should be committed, by his widow, who is incapable of guarding it, to any one brother of her husband: procreating a son on that widow, he must give the whole of the property to that child.

CCXXXIII.

MENU:—Should a wife, even though legally authorized, produce a son by the brother, or any other *sapinda*, of her husband, that son, if begotten with *amorous embraces and tokens of* impure desire, the Sages proclaim base-born and incapable of inheriting.

On this CULLÚCABHATTA delivers the following gloss: if a wife, even though legally authorized by spiritual parents, produce a son by the brother or other near kinsman of her husband, or by a man of superior class, who observes the prescribed form of being sprinkled with clarified butter and so forth, (for the circumstances mentioned are merely illustrative,) but acts from the impulse of unchaste desire, that son is incapable of inheriting, and is base-born; for he is not competent to perform obsequies and take the heritage: in fact he is begotten by an adulterer. But such a son, begotten without *amorous embraces and tokens of* impure desire, is capable of inheriting. That is declared by NÁREDA; "averting his face from her's, and shunning the contact of limb with limb, for the sake of offspring, that the family may be perpetuated, and not through amorous desire."* "That the family may be perpetuated;" in that family wherein that future son will continue *and perpetuate the race*, or wherein that woman will remain. The meaning is this: one fruit of a wife is connubial joy, another is male issue, as declared in the *Cálicá purána*, "a wife affords connubial joy and male issue:" since progeny is of course suggested by the single term of connubial joy, male issue is again expressly mentioned by way of allusion to the son legally begotten on the wife *of another* and so forth, and for the purpose of showing that the act must be free from amorous desire: the brother of a husband, and others acting as substitutes, must not take that fruit which consists in connubial pleasure, for the law does not authorize it; they must only seek that fruit which consists in male offspring. Connubial pleasure is a certain mutual relation of husband and wife; it is excited by the contact of mouth and limbs: hence, since that particular state which constitutes connubial pleasure must be avoided, it follows that the contact of mouth and limbs must be shunned. That particular state *unavoided* becomes the cause of degradation; hence a son should be procreated in a legal mode: a man of inferior class and so forth must in this case be shunned, as a damsel related within the degree of a *sapinda* and the like is avoided in contracting a marriage. Such is the law.

But some insert the privative *A*, and explain the text, "should a wife, not legally authorized by spiritual parents, produce a son by the brother, or any other *sapinda*, of her husband, that son is begotten through impure desire, &c." Their exposition is wrong, for the text would be a vain repetition of the following:—

CCXXXIV.

MENU:—The son of a wife not authorized to have issue by another, and the son begotten by the brother of the husband, on a wife who has a son then living, are both unworthy of the heritage; one being the child of an adulterer, and the other produced through mere lust.

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* Book IV, v. CXLVIII.

Both must be considered as sons of adulterers, and produced through mere lust.* Others, following the gloss of CULLÚCABHATTA on a text above cited (CCXXVI), consider the particle (*vá*) as connective, and interpret the text (CCXXXIII), should a wife, even though duly authorized, produce a son by any other than a brother or *sapinda* of her husband, that son is begotten through impure desire. To conclude, the Sage proceeds to mention a particular rule concerning the son of a wife:

CCXXXV.

MENU:—But the son *legally* begotten on a wife authorized for the purpose *before mentioned*, may inherit *in all respects*, *if he be virtuous and learned*, as a son begotten by the husband; since *in that case* the seed and the produce belong of right to the owner of the field.

"On her (*tatra*);" on such a wife as is suggested by the law, one of inferior class to the procreator, or related to him within the degree of a *sapinda*, and to whom he shows due respect, being sprinkled with clarified butter and so forth. Or the term (*tatra*) may be taken in another sense of the seventh case, as in the example, 'if there be wealth there is ease;' and the sense is, if the circumstances required by the law do exist. A son so begotten may inherit *the property*, (for that must be supplied in the text,) like a son of the body begotten by the husband on his own wife. Whose property shall he inherit; the husband's, or the natural father's? In reply to this question the Sage adds, "since in that case the seed and the produce belong of right to the owner of the field." The proprietor of the field becomes owner of the seed, because he begged it: hence the produce belongs to him. Why does not one irregularly begotten on a wife duly authorized, belong to the owner of the field? Therefore does the Sage add, "of right." He is lawfully begotten: but one irregularly procreated is not lawful issue; hence, though connected with the owner of the field, he is not considered as his son, for he is incapable of filial duties: and MENU had properly said in a former text, "the seed belongs to the landowner."

CCXXXVI.

MENU:—Whatever man owns a field, if seed conveyed into it by water or wind should germinate, that seed belongs to the landowner: the mere sower takes not the fruit.

As seed, such as corn and the like, being brought by a stream of water or current of wind, and falling on the field of another, produces a crop belonging to him, so seed, or seminal juices, brought by entreaty or the like, and falling on the field, that is, the wife of another, raises a son belonging solely to that other.

CCXXXVII.

BAUDHÁYANA:—The son begotten by another on the wife of a man deceased, impotent, or distempered, after due authority given for that purpose, is the lawful son of the wife.

2. He is considered as the son of two fathers, claims both families, and may perform the obsequies and take the heritage of both fathers.

* I think it unnecessary to alter the translation of this text for the purpose of reconciling it with the commentary. See MENU, Chap. IX, v. 143. T.

The construction is, 'the son begotten by another,' namely, by a brother of the husband and the like. In the compound term, which signifies son of two fathers (*dwipitá*), the regular suffix is omitted, not being indispensably requisite after compound words. He claims descent from the original stock of both. *The word* "obsequies" signifies rites performed in honour of ancestors. The *Retnácara.*

CCXXXVIII.

YÁJNYAWALCYA:—The son begotten by one who has no male issue, on the wife of another, after due authority given to him, is considered as heir to both, and shall present the funeral cake to both fathers.

CCXXXIX.

NÁREDA:—The produce of seed sown in the field of another, with the owner's permission, is considered as belonging both to the owner of the seed and to the proprietor of the soil.

CCXL.

SANC'HA and LIC'HITA:—The son of ANGIRAS has declared, that the offspring belongs to him who married the mother; but UŚANAS *holds,* that the produce of seed which is sown with the consent both of the owner of the seed and of the owner of the field, is shared by both.

Two opinions are delivered by SANC'HA and LIC'HITA, as espoused by two different legislators. The religious ceremony relative to the mother consists in taking her hand in marriage; to him who has done so, namely, to the owner of the field, belongs the offspring procreated by another. So ÁNGIRASA* has said. According to his opinion, this offspring does not belong to the owner of the field. Whatever seed is sown, its produce, or the offspring, which is similar to produce, is shared by both, that is, belongs both to the owner of the seed and to the owner of the field. So says UŚANAS, preceptor of the *Daityas*, and regent of the planet Venus.

CCXLI.

HÁRÍTA:—The son of the wife, *begotten by another* during *the* life *of her husband*, some consider *as son of her husband alone*, because she was not independent; *but one begotten after his death, they consider* as the issue of two fathers, because the seed was not sown *by her husband: for* soil bears not fruit without seed, nor does seed germinate without soil. They consider him as the offspring of both, because both appear *to contribute to his birth:* among these he is originally the son of the procreator; let him offer two funeral cakes in the sacrifice to progenitors, and celebrate both fathers on each cake: his son *shall name both* with the second cake; his son's son with the third; and those *remoter descendants*, down to the seventh in descent, who wipe off the rice with roots of *cuśa, shall make this offering* for the sake of *both ancestors in each of* three degrees.

* VRIHASPATI, son of ANGIRAS.

The *Retnácara* furnishes the following comment on this text: the husband being alive, they consider the son of the wife, though begotten by another, as son of the husband alone. Why? Because *the wife* is not independent; (for so must the text be supplied.) After the death of the father, *for whom a son is raised*, though she remain equally dependent (CCCCLXXVII 2), still they consider him as a son of two fathers. Why? Because *the husband* did not sow the seed in the field. Even in the case of a living husband, indeed, he is not *strictly* the sower of the seed. The mutual connexion of *certain* events is the cause of offspring: therefore does the Sage add, "*for* soil bears not fruit without seed, &c.," both are *severally* considered as owner of the seed and owner of the soil. The term used in the text signifies sacrifice to progenitors. "Let him celebrate both fathers on one cake:" let him repeat both names with each oblation; let him mention both fathers with each cake, and so forth, according to the oblation presented. "His son *shall name both* with the second cake;" that is, his son shall offer the second ball of rice *for both*. Three, who wipe off the rice with roots of *cuśa*, shall celebrate both ancestors. The term used in this gloss ("as son of the hustand alone,") *and which literally signifies agent (cartri)*, means husband; mentioned to obviate the doubt whether this son does not belong to both, since he is born of the wife, and begotten by the brother of her husband. This is true, because she is not independent: the wife belongs to the husband alone; and therefore offspring, obtained through her, belongs exclusively to him.

Is it not superfluous to distinguish whether the husband be alive or dead? for a woman is bound by the obligation of dependence on her husband, even after his decease; else a widow might connect herself with any man she pleased, since no one could oppose it. It should not be objected, that a widow is restrained from such conduct, not through her dependent condition, but by the dread of vice: else *(if women were not restrained by a sense of duty)*, what should prevent an unmarried girl connecting herself with a stranger? *The cases are not parallel;* for, in the instance of an unmarried damsel, there is no person who can authorize *her incontinence*. The seeming difficulty is likewise reconciled upon this principle.

The text is read *na dwyámushyáyanam*, not the issue of two fathers, instead of *dwyámushyáyanam*, issue of two fathers. He by whom the seed is sown, is in so far her lord; for she has no *real* husband. Consequently, after the death of her husband, since there can be no compact that the child shall be son of both, the offspring does not belong to both. But, during his life, it is possible that such an agreement should be made. With a view to this, the legislator says, "during the life of her husband." The negative must therefore have been inserted through negligence. According to the *Retnácara*, "some" is connected with "consider." The son, (that is, the son of the wife's son), when offering the second ball of rice to his paternal grandfather, shall celebrate both ancestors with each ball. In offering the third cake to the paternal great-grandfather, the son's son (that is the grandson of the wife's son) shall celebrate both ancestors.

Rigid interpreters consider the expression "during the life of her husband," as merely illustrative. They read the text *Yat dwyámushyáyanam*, and *explain it*, that son of the wife who is thus produced, some consider as son of two fathers. Why? Because *the husband is* not independent; (for so, *they think*, the text must be supplied.) The reason of his wanting independence is subjoined; because the seed was not sown by him. In

answer to the question, if the seed be more efficacious *than the soil,* must not the produce belong to the owner of the seed alone, not to the owner of the soil? but if the soil preponderate, must not the produce belong to the owner of the soil alone, not to the owner of the seed? the Sage subjoins the argument on which the produce may be held to belong to both; "for soil bears not fruit without seed, &c." The construction *of the sentence* refers to the word "consider" to the word "some." "Procreator" *alludes to the husband obtaining offspring* by means of his *wife considered as his* field; and *to the natural father obtaining issue* by means of seed. "Celebrate both fathers on one cake," is a secondary case. The term used in the text *(trín áṗhacshána)* signifies for the sake of *both ancestors in each of* three degrees. NÁREDA and CÁTYÁYANA have noticed both cases. Their text has been already cited (CCXXXIX *repeated at* v. CCXLV).

CCXLII.

NÁREDA:—The son of two fathers shall separately offer the funeral cake and water to both, and shall take half a share out of the estate of his natural father, and another half share out of the estate of his mother's husband.

From the word "separately," it appears that two funeral cakes shall be offered to two fathers. The order in which they should be offered, not being mentioned, is optional. It is observed in the *Retnácara,* that this relates to the case where the natural father has a son begotten in lawful wedlock, and the husband of the mother also has by some means obtained male issue by himself begotten. But a son of two fathers shall take the whole property of both fathers, if they leave no other sons (CCXXXVII). This is illustrated by the following example:—

CCXLIII.

Funeral cakes must be offered to both fathers, and both names be proclaimed with each cake; three balls of rice shall be offered to six persons; he who does so, errs not.

He commits no offence. The *Retnácara.*

The investiture and other ceremonies must only be performed by the husband of his mother; for he is claimed by him as a son. This child derives *a family name* from the primitive stock of both fathers, for BAUD'HÁYANA says he claims both families (CCXXXVII). In the triple set of oblations* to be offered by him, there shall be two paternal lines, say these rigid interpreters; for it is similar to the double set.

An apparent contradiction here occurs between the texts of BAUD'HÁYANA and others, and those of MENU and the rest. It is thus reconciled by CHANDÉSWARA: if the husband's brother, or other person appointed to raise up a son to the husband, have male issue, then the son of the wife belongs to the husband alone, not to the natural father; but if he procreate

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* *Nándímuc'ha;* a *s'ráddha* on joyous occasions, in which nine balls of rice are offered to the father, paternal grandfather and great-grandfather, to the maternal grandfather, great-grandfather, and great-great-grandfather, and to the mother, paternal grandmother, and paternal great-grandmother. T.

the son, stipulating, by special compact, that "the child shall in this world equally belong to both of us," that child shall be son of both. MENU himself makes this evident.

CCXLIV.

MENU:—But the owners of the seed and of the soil may be considered in this world as joint-owners of the crop, which they agree, by special compact, in consideration of the seed, to divide between them.

"By special compact;" by an agreement in this form, "the crop which shall be produced shall belong to both of us." AMERA states the term (*abhyupagama*) as synonimous with compact or agreement.

CCXLV.

CÁTYÁYANA:—The produce of seed sown in the field of another, with the owner's permission, is considered as belonging both to the owner of the seed and to the owner of the soil.

VRĬHASPATI (CCII), mentioning with scorn the son of a wife and the rest, because the mother is unfaithful, alludes to the son who is generated by a wife and brother proceeding with amorous blandishment, in opposition to the conduct prescribed. The son self-given is included by him in the description of sons rejected, or of those *who are* made *by adoption*.

CCXLVI.

VRĬHASPATI:—But other sons, namely, the son of the wife and the rest, shall respectively share a fifth, a sixth, and a seventh part.

"The son of the wife and the rest," namely, the son of the wife, the son of a young woman unmarried, and the son of a twice-married woman, shall respectively share, in the order in which they are mentioned, a fifth, a sixth, and a seventh part. The *Retnácara*.

HÁRÍTA directs, that an eighteenth part shall be given to the son of a wife begotten by a kinsman (CCXIX); the *Brahme purána* allots a third part to him (CCXVII); and SANC'HA and LIC'HITA direct another distribution.

CCXLVII.

SANC'HA and LIC'HITA:—Three shares shall be allotted to the son of a wife begotten by a kinsman, and to the son of an appointed daughter; and one to each of the rest.*

The form of distribution must be understood in the mode already explained *in the preceding section*. If *his birth and conduct be* irreproachable, it is agreed by all that he is heir to his *adoptive* father and to kinsmen. But the son of a wife, begotten by a kinsman without due authority, shall only inherit the estate of his natural father (CCXLVIII). Such a son is the same with the twelfth son described by VISHNU (CLXXXV).

* The last words are here subjoined to complete the text, as I find it cited in another place. T.

CCXLVIII.

If a son begotten in lawful wedlock, and a son of the wife begotten by a kinsman, contend for the same heritage, let each take,* exclusively of the other, his own father's estate.

It should be remembered in this place, that if the issue of one who has conducted himself in strict conformity with the law, happen to be a female, she shall belong solely to her natural or to her adoptive father, or jointly to both of them, according to the agreement *they have made together;* as is suggested by the reason of the law. This brief exposition may suffice.

SECT. V.—*On the Son of concealed Birth.*

He is fourth in rank according to YÁJNYAWALCYA; for, immediately after describing the son of the wife as third in rank, he proceeds to mention the son of concealed birth.

CCXLIX.

YÁJNYAWALCYA:—A male child, secretly brought forth *by a married woman* in the mansion *of her lord*, is considered as a son of concealed birth.

The purpose is to show that, on failure of other male issue, including the son of the wife *by a kinsman*, the son of concealed birth shall take a full share, although there be a son of an unmarried girl, a son given, or the like; and the rest shall take the portions allotted to them by HÁRÍTA and others (CCXIX). "Secretly;" so that it is not known whose child he is.

CCL.

MENU:—In whose mansion soever a male child shall be brought forth *by a married woman whose husband has long been absent*, if the real father cannot be discovered, *but if it be probable that he was of an equal class*, that child belongs to the lord of the *unfaithful* wife, and is called a son of concealed birth in his mansion.

If it be judged from any circumstances that he was not begotten by a man of inferior class, and if the true father be unsuspected, he is called a son of concealed birth, and belongs to the same class with his mother, and to the same family with her husband, and perpetuates his race. Such is the exposition approved in the *Retnácara*. It being mentioned as a reason why he belongs to the same class with his mother, that the true father is unsuspected, it is thereby intimated, as the opinion adopted in the *Retnácara*, that the legitimate son of a priest, by a *Cshatriyá* wife, belongs to the sacerdotal tribe. This mode of reconciling the apparent contradiction between the texts of YÁJNYAWALCYA and that of another legislator is liable to objection: the first, after premising that the son of a priest by a woman of the military class is called *Múrdhábasicta*†, and so forth, adds, "from a merchant, by a woman of the servile class, sprung the

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* The last hemistich is word for word the same with a text of MENU, Chap. IX, v. 191; but the first hemistich differs. T.

† The same with the *Múrdhábhishicta* of MENU. T.

"*Carana*; this rule is ordained in regard to married women:" the other expresses, "men of mixed classes perform rites during seasons of purity and "impurity, in the same form which is practised by men of their mother's "tribe." But CULLÚCABHATTA mentions, as the son of a married woman, the *Páraśava*, another name of the *Nishháda*, or son of a *Bráhmana* by a *Súdra*; but has said nothing expressly on this point. He shows, however, that, if the father be known to be equal in class, but the particular person be unascertained, the child is called a son of concealed birth. Equal in class here signifies not inferior in class; for that agrees with the *Retnácara*, and is consistent with reason.

If the natural father be known, and if authority had been duly given to him, and he violated no part of the form prescribed, such as being sprinkled with clarified butter and so forth, the child is called the son of the wife; but not unless authority had been given: in this last case he belongs to the procreator alone, as already mentioned. Is not good argument wanting to show why he should be called the son of concealed birth when the real father is unknown, but not so called when the procreator is ascertained? It should not be answered, if a known person procreate a son without authority given for that purpose, the child belongs to him alone, not to this *husband*. That is denied by MENU (CCXXXVI). If this *difficulty* be proposed, *the answer is*, legislators are not liable to such reproaches. In fact, this and other texts (CCXXXVI, &c.) allude only to the son of concealed birth, to the son of the wife, and the like. Else the son begotten by a known person, without authority for that purpose, would be another son of a similar description with the son of the wife. Nor is this reasonable; for MENU has provided against it (CCXXXIV). It should not be affirmed, that he may belong to the husband of his mother, although his right of inheritance be denied. The difficulty vanishes, if he may fulfil the duties of a son towards his real father (as a daughter's son *towards his own father*), although he belong to the husband of the wife. Nor should it be asked, what proof is there that he may discharge filial duties, since the twelfth son, mentioned in the text of VISHNU (CLXXXV), is explained in the *Retnácara*, from the concurrent import of the texts of VASISHT'HA and others, as signifying a son by a *Súdra*. He is described by APASTAMBA as son of his natural father.

CCLI.

APASTAMBA:—Let cautious men guard their offspring, and suffer not the seed of a stranger to be sown in their fields.

β' A son belongs to his natural father; the wife deem such offspring useless in another world.

From the mention of another world it appears that the child is, to his natural father, a son capable of performing for him such rites as respect another world. The meaning of the text is this: cautious men, or those who are not heedless and negligent, guard their offspring, their son, and son's son, and the rest; and they are careful that the seed of a stranger be not sown in their fields, meaning their wives. He subjoins the reason; because the son belongs to his natural father, and is useless *to the husband of the mother* in respect of another world. Such is the exposition approved in the *Retnácara*.

CCLII.

MENU :—They who are acquainted with past times have preserved on this subject holy strains chanted by every breeze, *declaring*, that "seed must not be sown in the field of another man."

2. As the arrow of that hunter is vain who shoots it into the wound which another had made just before in the antelope, thus instantly perishes the seed which a man throws in the soil of another.

3. Sages, who know former times, consider this earth *(Prĭt'hiví)* as the wife of king PRÍTHU; and thus they pronounce cultivated land to be the property of him who cut away the wood, *or who cleared and tilled it;* and the antelope, of the first hunter, who mortally wounded it.

4. Then only is a man perfect, when he consists of *three persons united*, his wife, himself, and his son: and thus have learned *Bráhmanas* announced this *maxim:* "the husband is even one person with his wife," *for all domestic and religious, not for all civil purposes.*

5. Neither by sale nor desertion can a wife be released from her husband: thus we fully acknowledge the law enacted of old by the Lord of creatures.

6. Once is the partition of an inheritance made; once is a damsel given in marriage; and once does a man say, "I give:" these three are, by good men, done once for all, *and irrevocably.*

7. As with cows, mares, female camels, slave girls, milch buffaloes, she-goats, and ewes, it is not the owner of the *bull or other* father who owns the offspring, even thus is it with the wives of others.

8. They who have no property in the field, but, having grain in their possession, sow it in soil owned by another, can receive no advantage whatever from the corn which may be produced.

The meaning of these texts is subjoined: as the arrow is vain which is last shot into the vacant wound of an antelope already struck by another, (the antelope not being thereby gained, because the first hunter, who mortally wounded it, is alone entitled to it;) so that seed is lost which a man sows in soil already owned by another; *for*, he does not thereby obtain the son *produced*, but the husband alone has a right to the child *born of his wife*. If he who enjoys the woman absolutely take her, to whom does her son belong? To this question it is answered, the right is null, since she had been already taken by another: Sages consider this earth, which became the wife of PRĬT'HU, as wife of him alone, though subsequently possessed by other kings; so, that woman who has been already espoused by one, and is afterwards seized or enjoyed by another, belongs to him alone *who first espoused her*. In like manner, cultivated land, or ground tilled for corn or the like, belongs to him who cleared the forest, and extirpated the remaining trees, of which the trunk and branches had been felled, not to him who subsequently tills the soil: and, in like manner, the antelope becomes the property of him who secured possession by mortally wounding

it, not of him who first seizes the dead animal and runs away. Still, may not another become owner of a woman, as of any other thing, by purchase or the like? The law-giver subjoins an answer, with the grounds of it: then only has a man due weight, *when he consists of three persons united.* Consequently one man consists of three persons, his son, his wife, and himself; as the sacrifice, called *derśa, consists of three acts of religion.** To this purpose words of scripture are inserted by CULLÚCABHATTA "(*the husband is even one person with his wife*"). How then can what is consubstantial with one become consubstantial with another? Notwithstanding gift or sale, she remains his wife, and becomes not the wife of another: this answer is expressly given; neither by sale nor by desertion does she cease to be his wife. As for desertion, mentioned among the sins of various degrees,† that relates to abandonment in civil matters; she is not thereby divorced. Hence she forfeits not her claim to the family of her husband; and, the offence being expiable by penance and the like, impurity *only* is contracted. As partition of inheritance among brothers is made once only, and must not be repeated to subvert *a former* partition without a sufficient cause, and as a man once only says "I give," (and consequently a thing which has been bestowed on one ought not to be given to another;) so a damsel is given by her father once only, and to one bridegroom. It follows of course, from the maxim, once only does a man say "I give," that a damsel can only once be given; is it not a vain repetition to add, "once is a damsel bestowed in marriage?" CULLÚCABHATTA replies, it is incidentally mentioned that chattels in general are once given, and partition of inheritance once made; the single gift of a damsel being the subject of the text, it is repeated: this text intimates that the offspring of a woman first given to one man, and afterwards obtained by another from her father or other relative, belongs to him alone on whom she was first bestowed. The subsequent text (CCLII 7) is plain; and the last verse contains a comparison. The import of these texts is particularly explained under the title of Duties of Man and Wife: the literal sense is here exhibited, for MENU declares that the produce belongs to the owner of the soil.

It should not be argued that these texts relate to the *express* appointment made by the husband for the sake of obtaining issue. Were it so, it would follow, that, in the case of a daughter appointed as abovementioned, her son would be considered as the son of her husband; and the comparison in a former text (CCXXXVI) would be unequal. If this be alleged, some reply, 'in the case of an appointed daughter, the damsel 'is given to a known person for the sake of raising up issue to *her father* 'himself; in the case of one who uses *his wife* himself, there is no delivery 'of her for the sake of obtaining male issue: such is the difference.'

CCLIII.

MENU:—They consider the male issue of a woman as the son of her lord: but, on the subject of that lord, a difference of opinion is mentioned in the *Véda;* some giving that name to the real procreator of the child, and others applying it to the married possessor of the woman.

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* The *ders'a yága* includes and requires the performance of the *prayája yága,* and this again requires the *iddyága:* the *ders'a yága* is a principal sacrifice performed on the day of new moon, as the *pawrnamás'a yága* is performed on the day of full moon. T.

† MENU, Ch. XI, v. 60.

2. The woman is considered in law as the field, and the man as the grain: now, vegetable bodies are formed by the united operation of the seed and the field.

3. In some cases the prolific power of the male is chiefly distinguished; in others, the receptacle of the female: but, when both are equal in dignity, the offspring is most highly esteemed.

Sages hold generally, that the male issue of a woman is the son of her lord; but whether that lord be the married possessor of the woman, or the real procreator of the child, *is questioned;* on this point the sense of scriptural texts is doubtful: such is the meaning of the first verse. As for what is affirmed, that whichsoever is chiefly distinguished in respect of procreation, whether the married possessor of the woman, or the real procreator of the child, to him does the son belong; still a doubt remains, for both are important. Comparing offspring to other organized bodies, the legislator adds, "the woman is considered as the field, &c:" all organized beings, even vegetable bodies, are formed by the united operation of the seed and the field. Consequently the soil and the grain equally contribute to reproduction; and it remains a doubt whether the son belongs to the owner of the field, or to him who is considered as the grain. The law-giver reconciles the seeming difficulty by distinguishing parallel cases: "in some instances the prolific power of the male is chiefly distinguished," or is most important, &c. To what different cases is their comparative importance referred? In what instances is the real procreator chiefly considered, and in what cases the husband or owner of the field? To this CULLÚCABHATTA replies, the real procreator is chiefly considered, when a child is begotten by a stranger on a wife not duly authorized for that purpose; the husband, when the wife has been expressly appointed *to raise up issue for him.* Accordingly BUDHA,* begotten by CHANDRA on the wife of VRÍHASPATI, who was not authorized for that purpose, was son of CHANDRA, not of VRÍHASPATI: VYÁSA, begotten by the sage PARÁSARA on SATYAVATÍ then unmarried, was son of PARÁSARA, not of DAŚARÁJA her foster father, nor of the king UPARICHARA her natural father. The receptacle of the female is chiefly distinguished in some cases: for example, DHRITARÁSHTRA and PÁNDU, begotten by VYÁSA on the two wives of VICHITRAVÍRYA† (AMBALICÁ and AMBICÁ), were considered as sons of VICHITRAVÍRYA. It should not be argued, that there is no want of ground for selection: if it be agreed that the produce shall belong to the owner of the seed, then it shall belong to him alone; otherwise it belongs to the owner of the field. The effect being produced by the intimate connexion‡ of the seed, there is in a manner no difference between them. But the field, being merely a receptacle, is inferior to the grain. MENU states this as an induction of common sense, and subjoins the reason in the second hemistich.

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* First of the lunar race of princes. T. † Forty-sixth of the lunar race. T.

‡ One of the categories in dialectic philosophy. It is the connexion of integrant parts with that of which they are parts; the connexion of class with individuals, of quality with subject, of action with the agent or with the subject: in short, it is intimate and sempiternal connexion, distinguished from conjunction, which is an accident, and placed among qualities in philosophical arrangement. T.

CCLIV.

MENU:—In general, between the male and female powers of procreation, the male is held superior; since the offspring of all procreant beings is distinguished by marks of the male power.

Because the produce is distinguished by unaltered marks of the seed, denoting the peculiar form *of its prototype, therefore is the seed held superior*. He expresses the same thought in the subsequent verse:

CCLV.

MENU:—Whatever be the quality of seed scattered in a field prepared in due season, a plant of the same quality springs in that field with peculiar visible properties.

There is no vain repetition; but an amplification of the sense, and a demonstration of the maxim contained in the preceding text. For this objection might have been made: seed cast on fertile soil produces the best fruit; sown in ungrateful soil, the worst: hence it should be affirmed, that intimate union with the constituent particles of earth also contributes to reproduction. That objection is here obviated: seed scattered in a field prepared in due season, that is, thoroughly tilled by the cultivator at the proper season for sowing, produces the best fruit; not so if the land be tilled at an improper season: can it be therefore argued, that intimate union with season also contributes to reproduction? Hence it should be only affirmed that a distinct effect proceeds from a distinct cause. There is no difficulty, nor possible reply; for time, having no constituent particles, cannot be intimately united with substance, *as a plastic cause with an effect.*

CCLVI.

MENU:—Certainly this earth is called the primeval womb of many beings; but the seed exhibits not in its vegetation any properties of the womb.

For the sake of distinction, he mentions the earth considered as a womb. Seed assumes not any properties of the womb, that is, of the earth, such as blackness, adhesion of sluggish particles, and the rest. A plant vegetates, being produced in fertile soil, as abovementioned. The constituent particles of earth might be supposed to enter into the plant, because vegetation consists in the increase of component parts: but the inference would not be accurate, for the properties of the soil, such as blackness and the rest, are not found in vegetating bodies, although their component parts be increased. As a jar, produced from a black lump of clay, is black, not so these *vegetable substances*. It should not be objected, that the plant, produced from grain, does not retain the small bulk of the seed: a small germin is first produced from the minute originary particles of the seed, which become fixed; afterwards the same plant grows by *assimilating* particles of earth and of water, which are most important in comparison with those which are foreign. Hence the seed is chiefly distinguished, because it is a prior cause; the earth is not *so* distinguished,

because it is a subsequent cause; what is foreign *to reproduction* is neither chiefly distinguished nor undistinguished, *but wholly unnoticed.* Accordingly a son begotten on a woman duly authorized by her husband, belongs to *him considered in law as* the owner of the field; not to a stranger, even though she were appointed by that stranger to raise up issue for him. It should not be affirmed, on the contrary, that a plant is first produced from the component particles of earth, and grows from the component particles of the seed. Were it so, plants of an uniform kind would be produced when seeds of various sorts are scattered in the same soil, as plants of an uniform kind actually are produced when seeds of the same sort are scattered in various soils.

CCLVII.

MENU:—On earth here below, even in the same ploughed field, seeds of many different forms, having been sown by husbandmen in the proper season, vegetate according to their nature:

2. Rice plants, mature in sixty days, and those which require transplantation, *mudga*, *tila*, *másha*, barley, leeks, and sugar-canes, all spring up according to the seeds.

3. That one plant should be sown, and another produced, cannot happen: whatever seed may be sown, even that produces its proper stem.

Accordingly seed watered in a vessel of hardest iron puts forth a shoot, even without soil; but earth alone, sprinkled with water, produces no plant without seed. Does not earth sprinkled with water produce grass and other plants, which have not been sown? and is it not consequently found that, in some instances, soil does produce plants without seed? It should not be argued, that the superior influence of the soil may be true in respect of grass and weeds; but the seed is sometimes chiefly distinguished in *the reproduction of* corn and the rest: hence they are alone mentioned in this place by way of illustration. There exists no argument to suggest this distinction, that the superior influence of the soil, as the natural cause of production, is deduced from the instance of grass and weeds; and the superior influence of the seed, from the instance of corn and useful plants. To the question proposed, the answer is, no; for even seed appertains to the terrene element.* Thus it is observed in a gloss on the words of UDAYANÁCHÁRYA, in his metrical rules of logic, ("colours like those of a germin and of a scorpion,") that the stem of the plantain springs from the seed of burnt canes. The reason is, that all vegetable, mineral and animal bodies are produced from the minutest particles of earth, called atoms, by means of inchoative union;† but such particles being in no respect dissimilar, since they are eternal, the plastic centers‡ of various kinds spring from

* That is, all seed is earth, and the seed of grass and other weeds exists in the soil, though not sown there by human design: I should wish to attribute this sense to my text. T.

† *Aravdha*, or *arambaca*, inchoative: by inchoation seems to be meant the first plastic union of atoms. T.

‡ *Sanst'hána*, an incipient body formed by the primary adhesion of particles, to which others are assimilated in its progress to a sensible form. T.

adhesions mutually dissimilar. It should not be asked, how can barley, and other plants which bear seed, such as corn and the like, be said to spring from a mass of earth alone, since such particles exist in the seed as well as in the mass of earth? A special adhesion is pre-supposed, which produces barley and other plants from component particles, to which a special adhesion belongs, connected with seed by its own nature, or by air fixed by the will of GOD: and, from the effect observed, an adhesion is presumed, which sometimes produces plants, even from particles to which adhesion relative to other seed belongs; as the stem of a plantain springs from the seed of burnt canes. In like manner, in the case of grass and weeds, they are considered as produced from such particles, to which an adhesion relative to the terrene element belongs. Neither is the superior influence of the soil thence inferred; for seed is not mentioned as useless *to reproduction*, nor as *contributing to it in an* inferior *degree*: and holy Sages affirm, that the seeds of all vegetables were placed in the earth subsequently to the creation.

Srí Bhágavata:—Surely thou shalt not foolishly disobey my commands, and abandon the seeds originally created by the self-existent, and *now* concealed in thee.

By the expression "concealed in thee," it is intimated that all seeds were placed in the earth. Accordingly the divine CÁLÌDÁSA says,

"This universe of moving and unmoving beings is celebrated as the production of that prolific seed which was sown in the waters by thee, O unborn being!"

And again:—"She, whom the wife call Nature, fostering all seeds."

The first verse contains praise of BRAHMÁ uttered by the Gods. "Unborn being! the universe, consisting of moveable and immoveable substances, is the production of that seed which was sown in water by thee, at the beginning of the world, when water alone had been created." Consequently the earth, containing seed which is the source of animate and inanimate beings, sprung from the united operation of seed and water.

It should be here remarked, that the body of a son being produced from the union of the seminal fluids of the male with the uterine blood of the female, as declared by VASISHT'HA (CCLXXIII), both ought to be considered as important *in generation*; but this agrees not with the examples stated as analogous. If this be alleged, the answer is, the text of VASISHT'HA is intended to require the assent of the mother to the donation, sale or the like, though she be not chiefly distinguished; for *the first part of* it concludes by declaring, that both parents have power to give, to sell, or to desert a son. This does not contradict the superiority of the male compared with the female. It should not be objected, that there is no argument to support this induction, since the component particles of animated body proceed equally from seminal fluids and from blood. The seminal fluids are immediately connected with life, *and therefore most important*.

Srí Bhágavata:—To produce the body of a living being, by an act governed by destiny, a drop of male seed must enter the womb of the female.

Accordingly, even without *a natural* soil, DRÓNA was produced from the seed of BHARADWÁJA deposited in a wooden bucket (*dróni*),* and others in similar modes,† but no one ever sprung from the field alone without seed. BHAGÍRAT'HA and others have been produced, like the self-existent, by the power of absorbed contemplation. But the short-lived men of the present day cannot procreate issue without a receptacle. Accordingly UDAYANÁCHÁRYA says, "By the experienced decline of birth, of initiating ceremonies, of science and the like, of power, of sacerdotal duties and acts of religion, the present race has degenerated." Common sense shows, that the component particles of the offspring are of the same nature with those of the father and mother, being *produced* from the intimate union of seminal fluids and uterine blood. Consequently, if the wife be committed *to another* for the sake of raising up issue, the offspring belongs to the husband of the wife; but if there were no such *declared* intention, he belongs to the natural father. Thus do authors expound the law.

But some hold, that a son procreated on the wife of another is competent to perform rites which respect another world, for his natural father only, not for the husband of his mother, though belonging of right to him: for it is said in the text of ÁPASTAMBA, "the wife deem such offspring useless in another world" (CCLI). MENU has declared, that the produce belongs to the owner of the field (CCLII); but he intimates, that rites which respect another world must be performed for the natural father (CCLIV). In some cases, that is, in respect of acts relative to another world, the prolific power of the male is chiefly distinguished; in others, that is, in respect of acts relative to this world and consequent to property, the receptacle of the female is chiefly distinguished.

It may be accurately affirmed, that the son of concealed birth becomes the son of his mother's husband, because there is no other owner (since the real procreator cannot be discovered), and because he is deserted by his natural father.

The son of concealed birth is described by VISHNU as sixth in rank (CLXXXV), to show that he shall not take a full share and so forth, if there be a son by a woman twice-married, and a son of a young woman unmarried, who are superior to him by good qualities and class. This shall be further explained in the section on the son of a young woman unmarried. By the consent of almost every legislator, he may take the inheritance of a kinsman, as well as that of his father. According to HÁRÍTA, a nineteenth part shall be given to the son of concealed birth (CCXIX); according to the *Brahme purána*, a sixth part (CCXVII); according to SANC'HA and LIC'HITA, one share (CCXLVII); for "the rest" intends the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth. He claims the family and lineage of his mother's husband.

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* A vessel used in boats to throw out water, and for other purposes. T.

† According to the legends of the *puranás*, AGASTYA sprung from the seed of PULASTYA deposited in an earthen vessel. T.

SECT. VI.—*On the Son of a young Woman unmarried.*

He is fifth in rank according to YÁJNYAWALCYA; for, after describing the fourth, or son of concealed birth, he thus describes the son of an unmarried girl.

CCLVIII.

YÁJNYAWALCYA:—The *cánína*, or son born of a young woman unmarried, is considered as the son of his maternal grandfather.

VASISHT'HA also assigns him the fifth place, but superior to the son of concealed birth, and inferior to the son by a twice-married woman.

CCLIX.

VASISHT'HA:—The son of an unmarried girl is fifth: he whom an unmarried damsel produces through lust, in her father's house, is called son of a young woman unmarried, and is considered as the male issue of his maternal grandfather.

CCLX.

The maternal grandfather becomes a father by the birth of that son whom his unmarried daughter produces from a man of equal class: such a son may offer the funeral cake, and possess the heritage.

"Through lust;" explained in the *Retnácara*, acting from the impulse of her own will. Ungiven signifies "unmarried." From an equal *man;* "from a man of equal class;" that is, from a man not inferior in class. Consequently, if an unmarried daughter, impelled by lust, receive the caresses of any man she may have chosen, and bring forth a son, that child belongs to his maternal grandfather, and is called the son of a young woman unmarried.

CCLXI.

BAUDÁYANA:—The male child begotten by a man of equal class, on a damsel whom he embraces unmarried and unaffianced, in her father's house, is called the son of a young woman unmarried, and becomes the child of him to whom she is afterwards given in marriage.

He is considered as son of him to whom that maiden is given in marriage. This disagrees with VASISHT'HA and YÁJNYAWALCYA. It should not be affirmed, that the word *cánína* is here taken in the sense suggested by its etymology; consequently the son procreated while she was a maiden (*canyá*) is called son of a pregnant bride (*sahód'ha*) and belongs to the married possessor of that woman; he is not named *cánína*: and hence there is no contradiction. The son of a pregnant bride is separately mentioned by NÁREDA.

CCLXII.

NÁREDA:—The husband is considered as father of the son produced by *his wife while she was yet* a maiden, of the son produced by a pregnant bride, and of him who is secretly begotten on a disloyal wife: they are held entitled to shares of the heritage.

And MENU, having described the son of an unmarried girl (CCLXIII), proceeds to the separate mention of the son produced by a pregnant bride (CCLXXXVIII).

CCLXIII.

MENU :—A son whom the daughter of any man privately brings forth in the house of her father, if she *afterward* marry her lover, is described as a son begotten on an unmarried girl.*

Nor should it be affirmed, that the texts of VASISHT'HA and YÁJNYAWALCYA suppose a declaration in this form; "her son shall be mine." Were it so, she would be an appointed daughter, and it would be wrong to name her son as fifth in rank. If this be proposed, the answer is: if the maternal grandfather have no male issue, then the son begotten on his unmarried daughter is considered as his son; if the bridegroom have no *other* male issue, the child is considered as his son; and if neither, or if both, have male issue, he is considered as son of both. CHANDÉSWARA.

Being son of both, though not begotten by one related by blood to the maternal grandfather, he claims the family of that ancestor only. In respect of double sets of oblations and the like, the practice is similar to that followed by the son of a wife considered as son of two fathers.

Here a doubt occurs; how can the child be son of the bridegroom, since the field did not then belong to him, and the son is not produced from his seed? Some reconcile the seeming difficulty by saying, the sense of the text is not rigorous in this instance. But others hold, that, grain being already produced in a field which had become waste, and that land being afterwards seized by any person, as the grain should also be taken by him, so, in the present instance also, *the offspring should belong to the subsequent possessor of the mother.* Should not that crop only, which is then produced, be taken by the present owner of the field, else he might claim the crops long since produced from that field? In like manner, in the case of an unmarried girl, the father alone has a claim to the maiden, and her offspring therefore belongs solely to him. If this be alleged, the answer is, while she continues a maiden, the father is only acknowledged to have such right as empowers him to give her in marriage, and no other: accordingly, he must not enjoy her, or the like. A son, therefore, becoming the property of his mother, because he is produced from uterine blood, belongs to her alone.

How then are the words of VASISHT'HA and YÁJNYAWALCYA justified? It should not be argued, that the dominion of the father over his daughter is admitted by these Sages; but that fruition is forbidden by positive law, like fruition of a female buffalo, or the like, held as property. Were it so, various opinions being delivered by Sages, we should have no certainty which ought to be followed. Nor should it be argued, that the different cases intended have been already distinguished: he becomes the son of his maternal grandfather, or of the married possessor of his mother, whichever has no son; consequently, there is no want of certainty. If the right of one be ascertained from reasoning, it is nothing to the purpose that another has no male issue. His maternal grandfather dying after his mother's marriage, if the child then became son of his maternal grandfather, and if *tonsure and*

* I do not alter the translation (Chap. IX. v. 172); but the commentary furnishes another interpretation.—See a subsequent note.

other ceremonies of his regeneration be performed by the family of that ancestor, how can he also become son of his mother's husband, when this man subsequently dies? Since he cannot be *truly* son of both, by which family shall his investiture and other ceremonies be then performed? On this point there is no certainty. Again; the son of a pregnant bride would be similar to the son of an unmarried girl, for he also was *in fact* procreated at the moment when pregnancy took place: but he is not given at the time of marriage, for the child is distinct from the woman to be wedded; and if he can be the son of two fathers, it is not proper to describe him as son of a single father. It should not be argued, that, as the clothes are also bestowed when a damsel is given with ornaments and clothes, so the fœtus is also bestowed when a pregnant daughter is given: the son of a pregnant bride, therefore, is not son of his maternal grandfather. Were it so, his affiliation being deduced from donation alone, a distinct partition, and separate share from that of a son given, would be improper; and the man who marries a pregnant bride, might enjoy a daughter born from that pregnancy.*

On this subject it is said, such offspring as the son of an unmarried girl belongs to both; because the mother has a claim to that child, since he sprang from her blood; and the maternal grandfather has also a claim, since he then possessed dominion over the mother: hence the man who espouses her claims the mother's share, for a wife has no property exclusively her own (Book II, Chapter IV, v. LVI). It should not be objected, that her father alone has an immediate right to her son, though springing from her blood, because even the blood of the daughter was subject to the dominion of her father. Were it so, a mother would have no claim to her son born in lawful wedlock, and the gift of her child would not depend on her assent, as declared by VASISHT'HA. It should not be argued, that, admitting the mother's power, the father has nevertheless a sole claim to the son born in lawful wedlock, because he has a natural right, since the son was generated from his seminal fluids; and the right accrues to him alone, even though the child be produced from uterine blood: a mother, therefore, has such a claim as the father has to the son of a wife begotten by a kinsman, and as the maternal grandfather has to the mother. Nothing can prevent the right of a husband to the property of his wife, as declared by a positive text (Book II, Ch. IV, v. LVI). Nor should it be objected, that a stepmother would have a claim on the son of another wife, under the text which declares property common to the married pair (CCCCXV). That is admissible; it will be mentioned in the section on Sons Given, that the son shall offer the double set of oblations and the funeral cake for her father.

We do not discover the reason why authors have said that he succeeds as a son to his maternal grandfather, or to the man who espoused his mother, if either of them leave no male issue. It should not be argued, from the text of YÁJNYAWALCYA (CCXXXVIII), that, as the want of male issue is mentioned as a prescribed condition in the case of the son of a wife begotten by a kinsman, so *is the same required* in the present case. 'SÚLAPÁNI, author of a commentary on the institutes of that legislator, refers this text to the case where a son is begotten on a wife *by a kinsman or a stranger*, with a previous *declaration or* implied intention, to which both parties assent, "the child shall be considered as the offspring of us both;" to which case NÁREDA *likewise* alludes (CCXXXIX). The words, "by one who has no male issue," are inserted *in the text* (CCXXXVIII), that the intention of the

* Because she was given to him. but does not become his daughter. T.

procreator may be fulfilled if he need offspring; for, he who has male issue can hardly need a son begotten on the wife of another; and one who has no progeny, of course, does need that son. Nor should it be argued that authors have said so, because his affiliation is null, if there be a son begotten in lawful wedlock, or other son of the *first* four descriptions. There is no argument to prove, that, if there be a son begotten in lawful wedlock, no other can be legal issue; the son of a pregnant bride and the rest are acknowledged, *although other sons exist;* and the appointment of a daughter to raise up issue to MENU (the founder of memorial law), whilst he had legitimate sons, could not be justified. Nor should it be argued that they have said so, to intimate his disqualification for offering the funeral cake to him who leaves any one of the four sons first described, as suggested by the text of YÁJNYAWALCYA (CLXXXIX). That is mentioned *in the text cited,* to show that the son of an unmarried girl is disqualified, if one begotten in lawful wedlock, or other superior son, exist, as a younger child is disqualified if his eldest brother be living. Else, becoming the son of the bridegroom, because the paternal grandfather at that time had male issue *living,* he shall not offer the funeral cake, even though the son of the maternal grandfather afterwards die; for, having once become the son of the bridegroom, that relation cannot afterwards cease. Again; if both a son of the body, and one begotten on a wife by a kinsman, exist, the right vesting in him alone who was begotten in lawful wedlock, shall not the son of the wife offer the funeral cake, if the son of the body afterwards die? It must be therefore affirmed, that, "on failure of the first" (CLXXXIX), signifies 'the first, qualified to perform the *śráddʼha* and the like, not being alive.' But, if it be said, we do not deny the right of both to the son of a young woman unmarried, but we deny his competence if there be a superior son to obstruct his claim; then this opinion coincides with our own. It is our opinion, say these lawyers, that by him is effected deliverance from the hell called *put,* and relief from the evils caused by the want of male issue, for his maternal grandfather, under such circumstances, and until his mother be married; and for the man who weds his mother, if no other son be procreated by him on any wife.

From the terms used in the text of MENU (CCLXIII), it appears that a child privately brought forth is alone considered as the son of an unmarried girl, not one whose real father is known; for, were it so, since the seed is superior to the receptacle, he would be considered as the son of his natural father.* He is described by MENU as seventh in rank, and inferior even to the son given, the son made *by adoption,* and the son rejected (CLXXVIII). DÉVALA describes him as fourth in rank (CXC); and so does NÁREDA (CLXXVIII). VISHNU and VASISHTʼHA (CLXXXV and CCLIX) assign to him the fifth place, but inferior to the son by a woman twice-married, and superior to the son of concealed birth. HÁRÍTA virtually places him sixth in rank (CCXIX).† To reconcile such seeming contradictions, authors have approved a regulation founded on the various degrees of virtue. The difference of class might be also considered: for instance, the

* It should therefore seem necessary to alter the version of that text, by substituting "a bridegroom" for "her lover;" or by changing the construction: "A son whom the daughter of any man privately brings forth in the house of her father, is described as a son begotten on an unmarried girl, and belongs to him who afterwards marries her." T.

† See v. CLXXXVII, where he is placed fourth in the enumeration of sons. T.

son of an unmarried girl, being procreated by a man of inferior class, is sixth in rank, if imbued with bad qualities; or seventh, if imbued with very bad qualities. No one has described him as inferior to the son of a pregnant bride; what then shall be the rule if the son of an unmarried girl be deficient in virtue compared with such a son? By parity of reasoning, the son of the pregnant bride shall alone take the inheritance; for vice is stated in the following text as a fault which excludes a man from inheritance; and it is reasonable that one who is deficient in virtue shall have a less share, if there be a virtuous son.

CCLXIV.

VRĬHASPATI:—Though born of a woman equal in class, one who is not virtuous shall have no claim to the paternal estate; it is ordained to devolve on those learned priests who offer the funeral cake to the deceased.*

But if they be equal in good qualities, affinity by birth and legitimacy should be considered. He who is a son given, is obtained by acceptance of donation; the son made *by adoption*, was similar to unowned property; the son of an unmarried girl is obtained in right of the field; a son by a twice-married woman is a child of the body, but produced by the adultery of his mother; a son of concealed birth is the offspring of the wife, *at the same time* possessing the general nature of unowned property. Consequently, a son by a woman twice-married, being procreated by a man himself, his affinity by birth is greater; a son of concealed birth, being procreated by another, while the mother belongs to the adoptive father, his affinity is less: the son of an unmarried girl is inferior to him, because the adoptive father was unconnected with the mother at the time of his birth; but is not inferior, *considered as the son of her father*, because the maternal grandfather then had a right *over the mother:* these, however, are not begotten by the married possessor of the mother. A son made *by adoption*, and a son given, may have been procreated by the lawful husband of the mother, but they are not related by birth *to the adoptive father*.

The proof is subjoined: relation by birth, as declared by the law, must be affirmed superior to legitimacy in respect of the right to inherit and to perform obsequies; else, that right would belong to the sister's son or other collateral, even though a son of a pregnant bride, or other representative, exist. Consequently, although a son given, or a son made *by adoption*, do exist, the son by a twice-married woman has a prior title; and that is declared by VISHNU and VASISHT'HA. His inferiority, declared by YÁJNYAWALCYA, must be explained by the difference of good qualities and class. For the distinction between a crop produced from seed belonging to the man himself, in a field appertaining to a deceased owner, and the crop produced from the seed of another, now deceased, in a field belonging to the man himself, must be deduced from the pre-eminence of the seed.

Is not the seed in this case similar to a waif? for the owner is not discoverable: but the field belongs to the adoptive father; and the son of concealed birth is therefore superior. A twice-married woman belongs to

* The text at large is here inserted from a subsequent section. It was partially and anonymously quoted in this place. See the interpretation in a subsequent Chapter, v. CCCXIX. T.

her first husband, even though a second marriage actually take place: property being once vested, it is not acknowledged to fail, even though her husband die (CCCCLXXVII 2); the offspring of a twice-married woman, being therefore produced in the field of another, is so far inferior. As for the son of a young woman unmarried, since a daughter, *afterwards* obtained by gift *from her father*, has not *already* produced lawful progeny, her *illegitimate* offspring is inferior to the son of concealed birth. That should not be affirmed; for, the natural father being unknown, the son of concealed birth is allied *to his adoptive father;* and, the owner of the soil being unascertained, the son by a twice-married woman is allied *to his natural father*.

Some commentators hold, that a son begotten on the wife of another, with an agreement in this form, "she is mine," is the son of a twice-married woman described by VISHNU as superior in rank. But if no such agreement be made, he is inferior, being mentioned by YÁJNYAWALCYA as sixth in rank. For example; the son procreated with the consent of the husband, expressed in this form, "the offspring shall belong to us both," and the third son begotten on the wife of another, (who becomes son of his natural father, as shown by the text of GÓTAMA,) are children of twice-married women.

CCLXV.

GÓTAMA:—Let not *issue be procreated by appointment* beyond a second *son*; *else*, the offspring shall belong to the natural father, or, by private agreement, to another: *but a son begotten* on the wife of a living man, belongs to him, or, by special agreement, to another by whom he was procreated; or he shall belong to him who maintains the mother, in right of that support; or to both, *if they need sons*.

CHANDÉSWARA thus expounds the text: let not him who is appointed to raise up issue, pass the second procreation, and beget a third or other son, in consequence of that appointment. If he do procreate further offspring, it belongs to the natural father. By a private agreement in this form, "all the progeny shall be mine," the further offspring belongs to another, namely, to the husband of the mother. That offspring which is begotten on the wife of a living husband, who is incapable of procreation, belongs to the husband, even though such offspring be third; or, by special agreement, being procreated by another on the wife of a living husband, he belongs to the natural father: but if another, namely, the natural father, support the wife, the first issue belongs to him; if he do not support her, to the husband; or if the husband maintain her, to him. The term used (*bhartri*) here signifying the person who supports her, the meaning is, that the son belongs to him who maintains the mother, in right of that maintenance: but if both need male issue, that offspring belongs to both.

But a son of concealed birth appertains solely to the mother, if the natural father be unknown.

CCLXVI.

NÁREDA:—Soil would not be *productive* without seed, nor is seed *productive* without soil: hence offspring is in law considered as belonging to both the father and the mother.

Father here signifies the natural parent. Hence the claim of the mother's lord arises solely from his right over her: and, the *Cálicá purána* expressing that a wife affords connubial joy and male issue, she prevails before a daughter in respect of male issue; the son of concealed birth shall therefore succeed in the first instance; after him the son of a young woman unmarried: such is the opinion of YÁJNYAWALCYA. The son of an unmarried girl is described by MENU as seventh in rank: that proceeds on the supposition of his becoming the son of him who marries the mother, as declared by MENU himself; he is indeed inferior, because he is not produced at a time when the adoptive father had property in the mother. NÁREDA, acknowledging the son of a young woman unmarried to become the child of him who marries her, describes him as superior to the son of concealed birth: that supposes transcendent virtue. This will become obvious from the further discussion of the subject. VISHNU and DÉVALA also suppose the son of an unmarried girl to be endowed with good qualities. In other cases, say these commentators, the seeming contradictions should be reconciled in a similar mode.

SANC'HA and LIC'HITA, DÉVALA and others, describe the son of an unmarried girl as heir to collateral relations; MENU, BAUDHÁYANA and others describe him as heir to his father and mother only. On this some lawyers remark, that his right of inheriting from his father, being declared in the institutes of MENU, which prevail over all other codes of law, is alone consistent with propriety. That is wrong; for, were it so, SANC'HA and the rest would have no authority. Therefore, a son of an unmarried girl, considered as the child of two fathers, shall, in conformity with the text of MENU, take the estate of him who became his father by marrying his mother, not the estate of that father's brother or other collateral: but he shall take the estate of the brother or any other kinsman of his maternal grandfather considered as his father, in conformity with the texts of NÁREDA and the rest. Such being the case, is there not an imperfection *in the texts* compared with each other? It should not be answered, that such a son of an unmarried girl is comprehended in the text of MENU under the appellation of a son rejected. Were it so, the son rejected by his natural parents, and such a son of an unmarried girl, would have equal shares. But it is not so, for he may be also comprehended in the text by the particle subjoined to the word rejected (CCLXXXVIII 2), *considering it as relative to another word understood*. The order explained in the section on Sons Given, must be assumed as it is delivered by YÁJNYAWALCYA and the rest. It should not be objected, that still there is an inconsistency with the text of NÁREDA, because he describes the son of an unmarried girl as the child of him who marries her, and as heir to the kinsmen of his father. The difficulty is removed by establishing, that he is considered as son of his maternal grandfather, in the text wherein he is described as heir to kinsmen: it cannot be said, that what is contemplated by YÁJNYAWALCYA, is not contemplated by NÁREDA. This subject will be further discussed in the section on Sons Given.

Other sons, says VRĬHASPATI, namely the son of the wife and the rest, shall respectively share a fifth, a sixth, and a seventh part (CCXLVI): that is, the son of a wife shall have a fifth; the son of an unmarried girl a sixth; and the son of a woman twice-married a seventh. Thus the *Retnácara*. But it may be objected, what harm would there be in saying the son of a wife and other five sons shall have a fifth, a sixth, or a seventh part,

according to the difference of their possessing good qualities *in an eminent degree*, or possessing them in a middle degree, or being wholy deficient in virtue? HÁRÍTA directs that a twenty-first part shall be given to the son of an unmarried girl (CCXIX). The *Brahme purána* allots an eighth part to him (CCXVII). SANC'HA and LIC'HITA ordain one share each for the rest (CCXLVII), meaning the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth. This brief exposition may suffice.

SECT. VII.—*On the Son by a twice-married Woman.*

He is sixth in rank according to YÁJNYAWALCYA; for, after mentioning the son of a young woman unmarried as fifth in rank, he proceeds to describe the son by a twice-married woman.

CCLXVII.

YÁJNYAWALCYA:—A son begotten on the wife *of another*, whether she were *previously* deflowered or not, is called the son of a twice-married woman.

Some hold that the son who is procreated on a wife authorized by her husband in the form abovementioned, whether she were previously enjoyed by him or not, is the son of a twice-married woman.

CCLXVIII.

CÁTYÁYANA:—The son begotten on her who, deserting an impotent or degraded husband, takes a second lord, is a son by a twice-married woman, and evidently belongs to his natural father.

This text they also consider as relating to an appointed wife; for impotence, degradation, and other motives for obtaining a son of the wife, are here mentioned, *the first expressly, the rest by implication.* Consequently, in such cases, wherein the son of the wife becomes son of her husband, either the third child, or he concerning whom it was agreed, "the offspring shall belong to us both," is called a son by a twice-married woman; not so the child begotten on a woman who deserts her wedded lord, and connects herself with another man, saying, "I am thine." That is wrong; for SÚLAPÁNI also describes the offspring of a woman who has deserted her lord, as son by a twice-married woman; 'a male child begotten on a widow 'married again, or on a woman who has deserted her lord *for a second husband*, is a son by a twice-married woman.' She who deserts her lord is not appointed by any person whomsoever *to raise up issue;* nor would such an appointment legitimate the son of *such* a wife. Not truly becoming the son of a wife *legally begotten by a kinsman or stranger*, what prevents his being justly considered as a son by a twice-married woman? *for by that is meant*, generally, the male issue of a woman not duly authorized. Accordingly it is said in the text of CÁTYÁYANA, "deserting a husband:" and degradation and impotence are there mentioned as the grounds of desertion. That term is merely illustrative; for the male issue of a wife duly authorized is also acknowledged as son of a twice-married woman; else, *considered as the offspring of his natural father*, he would not be included among the twelve sons: and YÁJNYAWALCYA does not proceed so far as to mention desertion.

CCLXIX.

MENU :—He whom a woman, either forsaken by her lord, or a widow, conceived by a second husband, whom she took by her own desire, *though against law*, is called the son of a woman twice-married.

He whom a woman, either deserted by her husband, or become a widow, produces by another man, with whom she has contracted a second marriage, is called the son of a woman twice-married, and is considered as the offspring of his natural father. CULLÚCABHATTA.

'Having contracted a second marriage with another man,' is the meaning of the terms employed in the text. It is thereby intimated, that the child begotten by a man who contracts a second marriage with *such* a woman, and not the male issue of her who has been duly authorized by her husband, is the son of a twice-married woman. Accordingly it is said in the *Retnácara*, 'he whom a woman conceived by a man of equal class ;' this is understood, and the subsequent term signifies connecting herself by marriage with another man : hence likewise ŚÚLAPÁNI explains the term, "son of a woman twice-married" (*paunerbhava*), 'son begotten on a woman married again.' To this an objection occurs, that, were it so, the son who is begotten with the sanction of the husband, and who is considered as the offspring of his natural father, would not be included among the twelve sons.

Is it not admissible, that he also should be considered as exclusive of the twelve sons, like one who is begotten by force on the wife of another, with or without the knowledge of her husband ; for he is not mentioned as a son by any author ? It should not be argued, as resulting from the text of MENU (CCLIV), that he is considered as the offspring of his natural father : that text is explained as declaratory of the proprietary right which is vested in the owner of the seed. Nor should it be argued that he is so because 'APASTAMBA describes him as performing rites relative to another world (CCLI), from which it follows that he is considered as a son : the text of 'APASTAMBA expressing, "the wise deem such offspring useless," must be explained as reprehending the adoption of a son begotten on a wife *authorized for the purpose*. If this question be proposed, the answer is in the negative ; for one who has no *other* male issue is shown to have a claim on the son procreated by him upon the wife of another ; and the natural father did procreate a child for the sake of having a son *to perform duties* relative to another world ; else the design that the offspring shall belong to both would be vain. If the right of property were alone sought, he would have omitted intercourse with the wife of another, and purchased a slave : *or*, *if he procreated the child* to have a son begotten from love of pleasure, *or spurious offspring*, he must have acted under the sole influence of lust.

Since YÁJNYAWALCYA calls a twice-married woman her who is again espoused with solemn rites (Book IV, v. CLX) ; since the words "forsaken by her lord" occur in the text of MENU (CCLXIX) ; and a similar term (*viháya*, deserting ; a derivative from the verb *há* to desert,) occurs in the text of CÁTYÁYANA (CCLXVIII) ; and since it is a rule that reasoning must not be employed where the sense of the text is obvious : therefore a son begotten on the wife of another, with the assent of her husband, is not acknowledged to be the son of a woman twice-married ; nor is the son of

the fourth disloyal wife, as described by NÁREDA (Book IV, v. CLVIII 8), any more than the son of the first disloyal wife, and the rest, acknowledged to be son of a woman twice-married. It should not be objected; then BUDA would not be son of CHANDRA. Gods are not liable to be reproached by man: otherwise VYÁSA would not be son of PARÁSARA; for SATYAVATÍ could not by any means be described as a twice-married woman, since she was not previously connected with any man. Again; since these are not included among sons by twice-married women, they might fall within the description of a son anyhow produced *irregularly*, who is mentioned by VISHNU as twelfth in rank (CLXXXV): still the persons instanced are superior in rank, through the efficacy of devotion and power, as VISWÁMITRA, springing from a military race, became a *Bráhmana;* but if devotion and power be wanting, such a son is of inferior rank. Accordingly persons so born have been mentioned by Sages, with some difference of opinion, as superior almost to every son; and authors have derived a settled rule from the discrimination of devotion and the rest, and from *transcendent* virtue.

If this be proposed, some reply, although YÁJNYAWALCYA, when treating of the distinction between a woman twice-married and a disloyal wife, describes the twice-married woman as one again espoused with solemn rites, still the word (*punerbhú*), from which the term "son by a twice-married woman" (*paunerbhava*) is derived, signifies only a woman who goes to a second lord. The term which signifies desertion in the text of CÁTYÁYANA must necessarily be affirmed to be merely illustrative; else there would be a contradiction between two legislators, one describing the desertion as the act of the husband (CCLXIX), the other as the act of the wife (CCLXVIII). How can an unmarried woman, who goes, through lust, to any man she may choose, be called a twice-married woman; the word "twice *or again*" is irrelevant? It should not be argued that her son is not considered as such. To deny the filiation of a son produced by a woman not previously enjoyed by another, at the same time acknowledging the filiation of a son produced by a woman *previously* enjoyed by another, is inconsistent with reasoning: even he is exhibited as relieving his father from *religious* debt in the following text, which cannot be restricted *to a limited sense.*

CCLXX.

SANC'HA and LIC'HITA, HÁRÍTA and PAIT'HÍNASI:—A father thrives by a son anyhow produced, and is indeed relieved from *religious* debt by his oblation of funeral cakes to progenitors.

To the question proposed these lawyers reply, her male issue must be included among sons of unmarried girls. It should not be objected, that Sages have not mentioned the offspring of an unmarried girl as son of the procreator. Though not expressly mentioned by Sages, it is consistent with the reason of the law: or the child begotten by a man himself, on the wife of another, may be technically named *his* son by a twice-married woman, although the term "twice-married" be not pertinent. In this manner the superior and inferior rank of various sons by twice-married women, settled according to the various opinions of many law-givers, and their right of inheriting from kinsmen ordained *by some legislators* and denied *by others,* are justified: and in the same manner the text of VISHNU,

which names the son by a twice-married woman as fourth in rank (CLXXXV), may be vindicated.

If the son of a paternal grandfather begotten in lawful wedlock, and the son of a brother begotten on a twice-married woman, are competitors for a succession, which of them shall obtain it? This must be regulated by the right of offering the funeral cake. The nephew, being the son of a woman again espoused with solemn rites, whom VISHNU and the rest intend by "the son of a woman twice-married," is the legal heir; but if he be son of a woman not espoused with solemn rites, he is not competent *to inherit*; for that is forbidden by MENU. It should not be objected that a second marriage is stated in the text of MENU (CCLXIX); yet he describes the son by a twice-married woman as incapable of inheriting from a kinsman (CLXXVIII). The difficulty is removed by affirming that he declares this son incapable of inheriting from a kinsman, supposing him to be the son of a woman not espoused with solemn rites by *the father* himself. Nor should it be argued, that, the institutes of MENU prevailing over every other code, the series declared by him should alone be received as the general rule, and the series propounded by others should be admitted only in the case of transcendent virtue; and thus a son given, possessing a common degree of virtue, and the son by a twice-married woman, being transcendently virtuous, shall have equal shares, and shall inherit from kinsmen. *As* in the case of witnesses, should an equal number *on both sides* give contradictory evidence, it is directed by YÁJNYAWALCYA that their characters shall be taken into consideration, so in the present case also the same *principle* must be adopted. Nor should it be objected that in this case equality must be affirmed, because the holy legislators are very numerous, and it would be improper to notice a great or small difference in the number *of law-givers espousing the several opinions*. Still that law which is consistent with reason must prevail, as directed by YÁJNYAWALCYA: "if two texts differ, reason, *or that which reason best supports*, must in practice prevail." Now reason shows that affinity dependent on birth, shall prevail over affinity dependent on acceptance of donation.

CCLXXI.

MENU:—Though such as are called sons for that purpose (*to prevent a failure of obsequies*), but were produced from the manhood of others, belong in truth to the father from whose manhood they severally sprang, and to no other *except by a just fiction of law.*

The receptacle is inferior to the seed: this must be acknowledged.

Other sons, says VRÏHASPATI (CCXLVI), namely, the sons of a wife, of an unmarried girl, and of a twice-married woman, shall *respectively* share a fifth, a sixth, and a seventh part. HÁRÍTA allots a twentieth part to the son by a twice-married woman (CCXIX). The *Brahme purána* assigns to him the next share *after the son bought;* that is an eleventh part. SANC'HA and LIC'HITA allot one share to each of the rest, namely to the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth.

VRÏHASPATI mentions the son of a twice-married woman and others with dis-esteem (CCII). The reason of it is the adultery of their mothers.

SECT. VIII.—*On the Son Given.*

YÁJNYAWALCYA, having noticed six sons affiliated through a right either to the seed or to the receptacle, proceeds to mention six other sons adopted without any such claim; and first he describes the son given, because he holds pre-eminence among them.

CCLXXII.

YÁJNYAWALCYA:—That son whom his father, or his mother *with her husband's assent*, gives *to another*, shall be considered as a son given.

He is seventh in rank, according to YÁJNYAWALCYA; for he describes him immediately after noticing the sixth or son by a twice-married woman. The particle (*vá*, or,) is in this place connective,* which is one of its senses, according to AMERA. Thus, if both his father and mother give him *to another person for adoption*, he truly becomes a son given: this supposes both his mother and father to be living; but if either of them be dead, the boy may be given by the survivor: however, should the man be deceased, the child must not be given by the woman without the assent of her husband *declared before his death*, as ordained by a special text.

CCLXXIII.†

VASISHT'HA:—A son formed of seminal fluids, and of blood, proceeds from his father and mother as an effect from its cause: both parents have power, *for just reasons*, to give, to sell, or to desert him; but let no man give or accept an only son, since he must remain to raise up a progeny for *the obsequies of* ancestors. Nor let a woman give or accept a son, unless with the assent of her lord. He who means to adopt a son, must assemble his kinsmen, give humble notice to the king; and then, having made an oblation to fire with words from the *Véda*,‡ in the midst of his dwelling house, he may receive, as his son by adoption, a boy nearly allied to him, or, *on failure of such*, even one remotely allied: but if doubt arise, let him treat the remote kinsman as a *'Súdra*. *The class* ought to be known, for through one son the adopter rescues many *ancestors*.

As an *only* son should not be given, so he should not be sold or deserted. Sale is a great offence, *even though made* in a season of calamity, when a maintenance cannot be provided; desertion is a great offence, because the family becomes thereby extinct. Thus the *Pracáśa*. Let no man accept *an only son*, because he should not do that whereby the family *of the natural father* becomes extinct: but this does not invalidate the adoption

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* This is disputed in the subsequent commentary. I have therefore translated the word in its common disjunctive sense, and supplied the same reservation as in the text of MENU, v. CCLXXV. T.

† A part of this text has been already cited in Book II, Ch. IV, v. VIII. T.

‡ With the mysterious words mentioned by MENU, Chapter II. v. LXXVI. T.

of such a son *actually* given *to him*. Some hold, that if an only son be given by a woman unauthorized *by her lord*, the donation is void, as if he had been given by a person who was insane or the like. "Let not a woman give a son without the assent of her lord:" the reason is, that a thing belonging to two persons ought not to be given by one without the assent of the other. If a donation of joint property, made by one parcener, be valid, why *should* not the gift of a son, who belongs in common to his father and mother, *be likewise good in law?* If single property, arising from the single efficient act of two persons, be attributed to both, then, should the thing be given away by either of them, that property being devested, the right of both is lost: but, in this case, a son being produced by distinct acts, one person furnishing seminal fluids, the other furnishing uterine blood, distinct property is created; and the gift made by one annuls his or her property only. It should not be objected, that the acts of procreation would be several, from the difference of time and persons. Although the acts be several, the procreation is one. Thus the reason why a son has property in the paternal estate, must be deduced from his birth being caused by his father; but the reason of a mother's property in her son must be deduced from his proceeding from her blood; and the reason of a father's property, from the child's proceeding from his seminal fluids. Although the same cause might here have been invariably assigned for the same effect, that must not be done *in the present instance, because* these *different causes* are established in conformity with the texts of Sages.

From the phrase "let not a woman give a son," as from the expression "let not a parcener give away joint property," does it not appear simply, that the gift ought not to be made, but the donation is not void? Then it should have been only said, "let not one give a son *without the assent of the other;*" for the husband ought not, by his sole act, to aliene property held in common with his wife. The husband, therefore, has the primary right over his son, as appears from texts (CCLIII 1 and CCLII 4); but the wife, being dependent on him, has a secondary property, because the son was produced from the united operation of her blood *with the seminal juices of the father,* and because she bore the child in her womb. Hence gift made by a dependent person, without the assent of the principal owner, is void: and this is accurate, according to the opinion of those who contend for the right of the husband to the property of his wife (Book II, Chapter IV, v. LVI).

"Nor let a woman accept a son *without the assent of her lord.*" If a son be accepted by a wife without the assent of her husband, her property in that child is valid, but not his performance of filial duties: he can neither possess the heritage, nor offer the *śrádd'ha* or the like, for it is shown that the adoption of a son is the act of the man; in no code of law is it found that adoption can be the act of the woman. It should not be argued, that the offspring of an unmarried girl and the rest become adoptive sons through the act of a woman. Although she produce the child through lust, his filiation is valid by the choice of the father, or by the authority of law, not by the choice of the woman. Thus the mention of gift, by the joint act of the father and mother, is intended to show the means of effecting a donation productive of no immoral consequence; but the gift made by the man alone is valid. However, the mother's claim is not annulled by his donation. But a child belonging to his natural mother, and to his adoptive father, is is not truly considered in practice as a son given; the adopter should therefore obtain the assent of both parents.

The form of adoption is subjoined; "he who means to adopt a son, must assemble his kinsmen:" this is intended to show, that a son known by kinsmen *to have been adopted*, shall take the inheritance, and perform the *śrádd'ha* and the like; and they shall not molest him. The notice given to the king is intended for the same purpose. The oblation to fire with holy words from the *Véda* is an *unessential* part of the ceremony: even though it be defective, the adoption is *nevertheless* valid; for no one admits that the principal object is unattained if an *unessential* part be defective.

Under the rule of TACSHA,* ("what is *moral or* imperceptible, is not a part of that which is *physical or* perceptible,)" the oblation to fire with holy words, which is *relative to* moral *effects*, and must be deduced from the positive precept alone, is not an *unessential* part of the investiture of property, nor of the adoption of a son, who is physical, or perceived by the senses; in like manner as the sacrifice on *consecrating* the site of a building is not an *unessential* part of the house, but an important act. The meaning is this: the rule of JAIMINI, ("that which is unproductive is a part of that which is productive, and which it attends,)" shows, that an act which is associated with the principal act, or with one producing the effect chiefly considered, and which confirms the moral merit proceeding therefrom, but which does not itself produce the effect chiefly considered, is an *unessential* part: now a house or the like, being perceptible *or physical*, does not produce moral merit; hence the definition of *unessential* part is inapplicable to the sacrifice performed on consecrating the site of a building; but it is not *true*, that the wall cannot be erected, nor the house roofed, without a sacrifice to consecrate the ground. Is it therefore proper to affirm, that, without an oblation to fire with holy words from the *Véda*, the moral benefit of adopting a son is not obtained; but it is, if that oblation be duly made; since the *simple* adoption of a son does not produce moral merit?

If this be proposed, the answer is; admitting this *oblation* to be an independent and principal act, like the sacrifice on consecrating the site of a house, still the adoption is not void if that *oblation* be omitted. But, in fact, moral merit is produced by the adoption of a son; for it has no other effect. It is not by that adoption that the child becomes a son; for he was already born *the son of another*.

If it be objected, that he is made the son of *the adopter* himself, that objection is answered by asking, does that affiliation to *the adopter* himself consist in the property vested in him, or is it attended with the power of taking the inheritance, and performing the *śrádd'ha?* The first is not accurate; for the property vested in the accepter is universally admitted, even though the oblation to fire with the mighty words† *earth, sky, heaven,* be omitted, as it is if tonsure and other ceremonies be neglected; since the law, in that case, declares him a slave (CLXXXII). If the second be affirmed, it may be asked, does the power of performing the *śrádd'ha* signify ability to do acts relative to funeral obsequies and the like? If it be performed by a traveller, although acceptance *for the purpose of adoption* had not taken place, his offer of the funeral cake does not become valid by his recital of the proper texts from the *Véda*. If it be urged, *by way of reply*, that the deceased does not attain bliss by his recital of holy texts with the oblation of a funeral cake, the answer is, this reasoning is identical: for bliss, *it must*

* Among the rules of prosody and rhythmical recitation attributed to the fabulous serpent of hell called TACSHACA. T.

† Collectively called *Mahávyáhrïti*. See MENU, Chapter II, v. 76.

be said, is attained through an act performed by one who was qualified for it; and the qualification consists in the performance of an act capable of effecting the attainment of bliss: these *propositions* reciprocate.

It may be argued, that the attainment of bliss through the act *of religion* performed by one who was qualified for it, must be thus particularly explained: *bliss is attained* through the act of religion performed by a son of the body, or by a son of the wife for a man who leaves no issue by himself begotten: it must be therefore affirmed, that, on failure of superior sons, bliss is attained through the act of religion performed by a son accepted *for adoption*: the right of performing acts capable of effecting the attainment of bliss, is therefore ascribed to this son in consequence of acceptance; and the ascribing of that right to him arises from making that the object of the acceptance, and the support whereon rests the object specially contemplated in performing the sacrifice with mysterious words from the *Véda*. To this argument the answer is, the acceptance and other *acts of adoption* being past before the attainment of bliss, a particular faculty, called moral merit, must be established.* It should not be argued, that, although acceptance be a past event, the past existence† of acceptance operates to produce the effect. Were it so, the past existence of an act always producing the consequence, there would be no argument to prove the moral relation of cause and effect; or, admitting that the past existence of acceptance does produce the effect, it would be *physical or* perceptible: but this has been already answered.

Is not the oblation to fire with mysterious words no part of the adoption, but independent of it, and an attribute of him who is qualified *for performing obsequies?* "An act of religion performed by one who was duly qualified," therefore signifies an act of religion performed by an adopted son, with a view to whom an oblation to fire with mysterious words has been made; and thus, should the oblation to fire be omitted, the power of performing obsequies being consequently wanting, the affiliation is null. It should not be objected, that since it is burdensome to make both *acceptance for adoption and the oblation to fire* attributes of the person qualified *to perform obsequies*, acceptance alone should be considered as an attribute, *or requisite condition*. There exists no argument, by which it can be distinguished whether the acceptance, or the oblation to fire, should be considered as the requisite condition; both ought therefore to be deemed attributes of him who is qualified to *perform obsequies*. Again; since it is true in law, that affiliation is not *complete* by acceptance alone, therefore tonsure and other ceremonies performed by the adopter's own family must be also affirmed to contribute *to affiliation*: in like manner, since there is no

* A particular *sanscára* called *apúrva*: I have explained in former notes the idea which seems to be attached to *sanscára*, which I translate 'faculty.' *Apúrva*, here translated merit, is, in a general sense, the relation between cause and effect not consecutive. According to what system *apúrva* is considered as a *sanscára*, I know not: in dialectics they are distinct qualities; and the *Mímánsa* does not admit *apúrva* in a philosophical arrangement. However, the relation between a past event considered as a cause, and a remote event considered as its effect, may be called a faculty or power to produce that effect, if there be any subject to which the faculty can be attributed: in this view, the son has, in consequence of adoption, the faculty of procuring bliss for his father. T.

† It has been already explained, that, according to one system of philosophy, the cessation or past existence of an event is considered as positive, and subsisting, for the purpose of connecting with it another event considered as its effect. T.

reason for selecting one in preference to the other, the oblation to fire with holy words from the *Véda* should also be considered as contributing *to adoption*. But the notice to kinsmen, and other formalities appearing to be intended for an evident *or popular* end, an imperceptible *or moral* purpose ought not to be attributed to them. Is it not thus proved, that adoption is not valid, unless an oblation to fire with holy words from the *Véda* be duly performed?

When this argument is proposed, the answer is; yet notice to the king and convocation of kinsmen are necessary for a seen *or secular* purpose, namely, that the adopter's brothers and the rest may know the name and class *of the child*, and so forth, after thoroughly investigating *all circumstances*: for this reason (*the purpose not being indispensable*), affiliation is in some instances valid, even without this *unessential* part *of the ceremony*. In like manner, should the oblation to fire be partly omitted in consequence of inability *to complete it*, the adoption is sometimes good in law, as marriage and the like are valid in similar circumstances.

The meaning of that observation of VÁCHESPATI BHATTÁCHÁRYA may be thus explained: if the intention of the party be only declared in this form, "I give you this damsel," she continues a maiden, and the accepter does not become her husband; *on the contrary*, she may be given to another, as a girl called PRĬT'HÁ was bestowed by the father of VASUDÉVA on CUNTIBHÓJA, and afterwards given by him to PÁNDU: but if the intention of the party be thus expressed, "I give this damsel to be *thy* wife," she becomes the wife of the accepter, and cannot with propriety be given to another; this alone constitutes marriage: so, if a gift be made declaratory of property only, then property alone is *conferred*, as in the case of a slave; but if the *declared* intention be expressed in these words, "I give him to you as a son," and if *the acceptor's intention be thus* expressed, "I take him as a son," he becomes a son; nothing else is required.

Since the *Cálicá purána* declares filiation null, if tonsure and other ceremonies, preceded by the enunciation of the family name, be omitted (CLXXXII), this is necessary to assist adoption. But since no one has declared that filiation is null if the oblation to fire with holy words from the *Véda* be omitted, the validity of adoption by gift and acceptance only, without such an oblation, is fully proved by reasoning. However, as a son is produced from secundation without the recital of holy texts from the *Véda*, but a son is perfected by the recital of them (for YÁJNYAWALCYA declares, "sin, arising from the seed and the womb, is expiated *by the ceremony of tonsure, and by those which precede it*);" so, even without an oblation to fire sanctified by holy words from the *Véda*, adoption, the object of that act of the will called acceptance, is indeed valid, but no special perfection arises. On the other hand, tonsure and other ceremonies, preceded by announcing the family name of the natural father, having been *already* performed, the claim to the original family cannot be forfeited; how then can the child become son of another? On this and similar reasoning is founded the text of the *Cálicá purána*, which we revere as the commandment of our master. Without minute investigation, it is admitted, that the adoption of a boy, for whom tonsure and other ceremonies had been *already* performed after announcing the family name of his natural father, is void.

It should be here considered, that, if the *adoptive* father die after taking *as* a son *a boy* under the age of five years, but tonsure and other ceremonies have not been performed, the adoption is nevertheless valid;

hence the celebration of these ceremonies, with the family name of the *adopter* himself, ought not to be considered as contributing *to the adoption*; but the circumstance of tonsure not having been performed with the family name of the natural father *should be so considered.* Whence is this deduced? From the text of the *Cálicá purána* (CLXXXII 1), which shows, that the circumstance of tonsure and other ceremonies not having been performed with the family name of the natural father, does contribute *to the validity of adoption.* It should not be argued, that, since there are no grounds of selection, both ought to be considered as contributing *thereto.* The purpose being answered by one, it would be burdensome to establish that both contribute to adoption; and there is no occasion for so doing. Nor should it be argued, that occasion arises from the text last quoted (CLXXXII 1), which invalidates the adoption of a son given, for whom tonsure and other ceremonies had been previously performed with the family name of his natural father, and are afterwards performed with the family name of the adopter; and from the other text (CLXXXII 2), which declares adoption void unless tonsure and other ceremonies be performed with the family name of the adopter: there is consequently separate occasion for both, and both ought therefore to be affirmed necessary concomitants *of adoption.* The obvious sense refers to one only; for the initiation being completed by the ceremony of tonsure already performed, the child is not initiated under the family name of the adopter, but his initiation under the family name of his natural father remains in full force: thus his adoption may be invalidated by a single text. It should not be objected, that, were it so, there would be no ground of preference to determine which shall be affirmed to contribute to adoption. Since his filiation, prior to the ceremony of tonsure performed under the name of the adopter's own family, must be acknowledged, it must be a requisite concomitant of adoption, that another family name have not been previously used: for, if he did not become a son before the ceremony of tonsure be performed, how could the father announce the triple set of oblations,* which is a part of that rite, *in these words,* for the "sake of commencing the ceremony of tonsure for my "son, belonging to the original family named so and so?" He would not then be son *of the adopter,* nor descendant of the ancient Sage, who is the source of the family. Neither does the triple set of oblations alone constitute the ceremony of tonsure, for the family name would be changed by the performance of that alone. It should not be argued that the sense of the word tonsure should be extended to this *śrádd'ha,* which is a part of the ceremony; else the text would be inaccurate, since the family name is not announced during tonsure, which is the principal object of the ceremony. Were it so, if the triple set of oblations only had been made under the name of the natural father, and tonsure had casually remained unperformed, a boy, for whom it was afterwards performed under the family name of the adopter, by whom he was taken under the age of five years, would not be a given son duly adopted. Say not, that is admissible. The law does not show adoption to be void, when the principal part *of this ceremony* had not been *previously* performed. It should not be said, that the word tonsure must extend to that part of the ceremony which effects the purpose, but that the *śrádd'ha,* not effecting the purpose consisting in tonsure, is not included in that term. There exists no argument on which this can be established.

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* *Nándimuc'ha śrádd'ha:* but the balls or funeral cakes are not usually offered in this *śrádd'ha:* the oblations consist of barley, water, and *cus'a* grass. T.

The adoption of a child taken at the age of five years, but for whom tonsure and other ceremonies were afterwards performed under the family name of his natural father, would be nevertheless valid : for the ceremony of tonsure performed under the family-name of his natural father is void, because he did not then belong to that family ; and because the ceremony is performed by one who had no right to do so, since he truly became son of the adopter, and certainly belonged to his family, not having been already initiated under the family-name of his natural father when the adoption took place. It should not be objected, that, were it so, the text of the *Cálicá purána* (CLXXXII 1) would be unmeaning. That text is only intended to invalidate the adoption of a boy for whom the ceremony of tonsure had been performed within the third year, and who is *afterwards* accepted *for adoption* within his fifth year. In this case, whose son does he become ? He becomes the slave of the person who accepted him *for adoption*.

On this subject it is said, the inference ought to be deemed admissible ; for the ceremony of tonsure *thus performed* is void, and a repetition of it is needed : but that cannot take place, since there is no person capable of performing it, because he is not truly son of either ; for you must affirm, that, by the relinquishment of the giver, the boy ceased to be his son, or to belong to his family, and that his affiliation is void. It should not be objected, that the text of the *Cálicá purána* (CLXXXII 2) would be unmeaning. It is intended to confirm the sense of the preceding verse (CLXXXII 1). A boy therefore, being accepted under the age of five years, is in law a true son of the adopter, even though the ceremony of tonsure have not been performed. Accordingly, if his filiation were incomplete until his marriage, which is included in the term "and the like" (CLXXXII 2), he might espouse a damsel related to the adopter, within the degree of a *sapinda ;* and the affiliation of one whose marriage happens not to take place, would be void ; and tonsure and other ceremonies for men of the servile class, being optional, if these be not performed, the adoption would be invalid : these and other difficulties are obviated ; for the implied object is to except *one for whom* the ceremony of tonsure *has been performed* under the family-name of the natural father.

It should be here remarked, that no law is found expressing that a son shall not be adopted by one who has not contracted a marriage ; nor any law, that a boy, *known by his family-name to be* of the same primitive stock, shall not be adopted. But, in fact, if the adopter wilfully omit any of the ceremonies, either that tonsure, or any other which is ordained for his class, the boy becomes a slave ; if the adopter die, while disposed to perform those ceremonies on a day subsequent to acceptance, the adoption is nevertheless valid : that disposition must be understood to be an intention *which may be expressed in these words*, "I will perform them." This should be admitted as a rational interpretation ; else, his affiliation being imperfect when such an adopter died, the estate would be taken by a brother's son ; afterwards, when the affiliation was perfected by tonsure subsequently performed *by the kinsmen*, the son would be destitute of property ; or, being then unconcerned with mourning, he might himself cause the ceremony of tonsure to be performed, and *thus becoming a true son*, present fire *to the funeral pile of the deceased;* which would be inconsistent with common sense.

In the double set of oblations, to whom shall he offer the funeral cake, with which he utters the words "maternal grandfather?" On this some

remark, that to say he shall offer it to the father of her with whom his adoptive father is married, would not be pertinent; for, a son adopted by one who had no wife, would have no maternal grandfather's line. It should not be argued, that one who has no wife, being *consequently* excluded from the order of a householder, cannot properly adopt a son, this being an act mentioned when treating of the order of a housekeeper or married man. There is no argument *to support such an induction*. Accordingly, it is recorded in the *Bhárata*, that PÁNDU, having gone to the forest* with his wife, adopted sons begotten on her *by strangers;* and it is recorded, that VYÁSA and others, who had contracted no marriages, nevertheless obtained sons, namely SUCADÉVA and others. He who happens to have no wife, (whether he have contracted no marriage, or his wife have died or be forsaken by him,) either has not completed the ceremonies which perfect *twice-born men*, or belongs to no order; but it is contrary to common sense that, although the form of adopting a son given have been observed, the adoption should be void.

If a son be adopted by a man married to two wives, he would have two maternal grandfathers, and *would claim as maternal ancestry* both their lines of forefathers. This seeming difficulty is thus reconciled: although there be two sets of maternal ancestors, they should be jointly considered as manes of ancestors, and they should be thus named in performing the *śrádd'ha*, "such a one maternal grandfather, sprung from such a primitive stock! such a one materal grandfather, sprung from such a primitive stock! to thee (*to each of you*) this funeral cake is offered," and so forth, as is done by the son of the wife considered as a son of two fathers. Thus some *reconcile the difficulty.*

Males only need sons to relieve them from the debt due to ancestors. Accordingly, the Sage MANDAPÁLA, desiring admission to a region of bliss, but repulsed by the guards, who watch the abode of progenitors, because he had no male issue, accepted a bird for his consort, that he might earlier obtain a son; and it is recorded in the *Mahábhárata* and other works, that JARATCÁRU, RUCHI, and other males, have taken wives for the sake of obtaining male issue, but *it is* no where *said* that a woman *has taken a husband* for that purpose. Accordingly, in the double set of oblations, it is indispensably necessary that the son should perform the *śrádd'ha* for the paternal line, not for the line of his maternal grandfather: but it is simply reprehensible in one who performs the *śrádd'ha* for the paternal ancestors, not to perform it also for the maternal grandfather and his progenitors. Consequently, since the *śrádd'ha* may be performed without noticing the maternal grandfath r's line in a subordinate double set of oblations and the like, the *śrádd'ha* for the maternal ancestors is not requisite to the completion of the obsequies performed in the dark fortnight *of Aswina* This observation of RAGHUNANDANA and others is accurate. Accordingly a widow, though she may perform acts of religion without consent previously declared by her deceased lord, cannot, *without such consent*, adopt a son given; for the text of VASISHT'HA expresses, "let not a woman give or accept a son," &c. (CCLXXIII). But, if her husband assented, she may adopt a son given, as a son of the wife *is raised up to a husband by his consent;* else it should have been expressed in the law, "he shall not be the son of her husband unless *adopted* with the assent of her lord, but shall be

* And having consequently entered into the order of devotion. T.

her own son to perform her obsequies and take her inheritance." A son given is therefore the child, not of his *adoptive* mother, but of his adoptive father only.

Then, what occasion is there for any relinquishment on the part of the natural mother? There is none according to the *Retnácara*. That opinion will be forthwith explained. But in requiring joint relinquishment on the part of both *parents*, the texts of Sages are liable to no reproach. The reason is, that it is not admitted that one shall be father of a son given, and the wife of another be his mother. Some indeed admit that situation of a son illegally begotten, considering him as one of the various sons by twice-married women; but SÚLAPÁNI and the rest do not admit it. Consequently, with the followers of the *Yajurvéda*, a son given shall perform a *śrádd'ha* to the paternal grandmother and the rest instead of a maternal line, like a man whose mother became an outcast: but he is entitled to take the wealth and perform the obsequies of his adoptive mother, like the son of a contemporary wife and the rest. This, *say some lawyers*, is demonstrated. But that is wrong; for *the author of* the *Párijáta*, UDAYACARA, CHANDÉSWARA, and others, who follow not the dictates of predecessors, forbid the raising up a son of the wife and the like if there be a son by a contemporary wife, and virtually admit the adoption of a son given on failure of issue by contemporary wives, provided authority have been received from the husband.

But the maternal grandfather's line is the paternal ancestry of the natural mother, as observed by VÁCHESPATI BHATTÁCHÁRYA, from an expression found in the *Srádd'ha Chintámeni*, "the maternal grandfather's line is common to all." In that remark he delivers this opinion: by the father's relinquishment, his funeral rites, and the son's claim to his estate and family, are annulled; by the mother's relinquishment also, the son's claim to her estate and family is cancelled; but the father of the natural mother not having relinquished the child, how can the boy's claim to perform his *śrádd'ha* and take his inheritance be annulled? The *śráddha* for a maternal grandfather is not a consequence of his property, for he has no property in his daughter's son; it is grounded on the birth of the child from a daughter procreated by him, and that descent is not in this case lost. If it be asked, *since* his descent from his father and mother likewise is not lost, shall he not therefore perform the *śrádd'ha* for them also? *the answer is*, the right of performing obsequies and the like for a father and mother does not arise from birth alone, but from the relation of a son to his parent: if he be forsaken, although the descent remain the same, the relation of parent and child does not subsist, for he is not numbered among sons; and although the definition of a son born in lawful wedlock be applicable, he must be excepted under the authority of the law, since those who are technically called sons are alone qualified to perform the *śrádd'ha* and the like.

Still shall he not take the inheritance and perform the obsequies of the natural father of his natural father; for grandsons, not being technically so named like sons, "born from a son" is the definition of a grandson in the male line? One born from a son is not *the meaning of* "grandson in the male line," but son's son is *the meaning of that term;* else the adopted son of a son would not be a grandson: and, if that inference were deemed admissible, it would be incompatible with the text of the *Brahme purána*.

CCLXXIV.

Brahme purána:—They claim *descent from* a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race.*

It cannot be *true*, that he who is the son of a son, is not a grandson in the male line: and it is proper to affirm, that he continues the race of the paternal grandfather. May not the phrase "propagate a distinct race," signify "continue the lineage of the father," not "continue that of the paternal grandfather?" It is inconsistent with common sense to say, that a line of descendants, uninterrupted like the stream of the Ganges, is the race of the father alone, not of the paternal grandfather. Or, if that were deemed admissible, the expression "claiming descent from a different primitive stock," would be inaccurate; for it signifies claiming descent from that Sage (CAŚYAPA or another), who is the founder of the family (or described in the *Véda* as the source of descent) of a different person from the natural father, meaning of course the adoptive parent: consequently, if a son, born in a family claiming descent from ŚÁNDILYA, be adopted into one which derives its origin from CAŚYAPA, but do not become the grandson of the adopter's father, CAŚYAPA would not be the source of his descent. Again; what would be the meaning of "separate in the oblation of funeral cakes?" It does not signify bound to offer a funeral cake to a separate person, that is, to one different from the natural parent; for, were it so, all persons would be "separate in the oblation of funeral cakes," since they present such offerings to their mothers and to their paternal and maternal grandfathers and the rest. Therefore "funeral cakes" must here denote relation within the degree of a *sapinda;* and the term above quoted signifies, that the relation by the funeral cake is different from that which existed through the ancestry of the natural father. Hence it is deduced, that, omitting the succession of natural progenitors, the funeral cake shall be offered, in the double set of oblations, to the ancestry of the adoptive father. Thus it likewise appears, that the paternal grandfather enjoys the funeral cake offered by that *adopted son*. Or the word *pinda* may signify the set of ancestors who have reached the abode of progenitors. Still relation by the funeral cake virtually appears *to be the sense of the word;* for the derivation of the term *prĭthac pĭnda* exhibits as its sense, "those whose sets of ancestors are distinct." If a brother's son be adopted, still, since he enters the family of the adopter, the set of ancestors is distinct, as a cow and sheep are different from a cow and goat.

It should not be objected, how can the term maternal grandfather be properly used, since it signifies mother's father; but he (the natural grandfather) is not a mother's father, since his daughter is no longer mother *of the adopted son?* Although she be not then considered as such, yet, since she was mother of the child at some *former* time, the relation of her father is not lost; the word *mátrĭ*, from which the term *mátámaha*, or maternal grandfather, is derived, signifies natural mother only; and although such relation cease by her death, still the word mother is used in performing a *śrádd'ha*.

The father's right in his son, who is given away after the death of the mother, is devested by his donation; but, since she has made no gift, shall

* See the remainder of the text at v. (CCLXXVII).

not the son perform the *śráddʼha* in consequence of her subsisting right? It should not be answered, that, since the text of VASISHTʼHA describes gift as the act of both (CCLXXIII), a son whose mother is dead, ought not to be given; else a son whose father is dead might in like manner be given away by the mother. Since a subsequent phrase, "let not a woman give or accept a son, &c.," specially forbids her giving away a son without the assent of her lord, it is thereby intimated, that if the wife be *living*, her co-operation is required for a donation made by the husband; but if she be not *living*, there is no objection to a gift made by the husband singly. When this argument is proposed, the answer is, that inference is admissible. But, in fact, a son whose mother is dead ought not to be given away; it contradicts common sense that one should be father and the wife of another be mother *of an adopted son*. If gift be founded on the co-operation of the mother, then such a contradiction to common sense does exist in this case; for the mother's gift *of the son* becomes necessary. Thus some expound the law.

But CHANDÉSWARA explains the phrase "both parents (*the father and mother*) have power to give a son," the father has *that* power, and the mother has *that* power; for it is a rule that in the apposition called *dwandwa*, each term, whether expressed first or last, is severally taken and intended. The law-giver also forbids the attempt of a mother to make a gift without the consent of the father: "nor let a woman give or accept a son unless with the assent of her lord." But there is this difference: if the father be *living*, a mother can only make a gift with his assent; but if he be not *living*, *she may do so* even without his *previous* consent.

According to this opinion, the husband's gift of a son is valid without his wife's consent, even during her lifetime; but the wife's property in her son is not thereby devested. If this be affirmed, the answer is; what difficulty is there? It may, however, be questioned, how a son given by a widow without authority from her deceased husband, can become the son of a male. But others deduce from the phrase "both parents have power, &c.," that gift is the several act of each of them: but a donation by a woman is there forbidden; "let not a woman give or accept a son unless with the assent of her lord." It should not be objected that the word mother in the expression "both parents (the father and the mother) have power, &c.," would be unmeaning. It shows that she may confer an equal right with her own. But in this case, even though she transfer such right, the affiliation is not valid; for the adoption of a son consists in *the acquisition of* an equal right with the man's. It should not be argued that adoption is valid even in the case of a gift made by a widow, because she is then independent of her husband's death; and the accepter acquires property in the son as it were by occupancy, since there is no *existing* claimant of that right. Still she cannot properly confer an equal right with that of her lord; and the claim to a son, acquired by occupancy, is not acknowledged; else, property by occupancy in any child whose father and mother are deceased being admitted, he would become in law the adopted son *of a guardian*. It appears that a woman is dependent even during her widowhood, since a text (CCCCLXXVII 2) requires her to preserve undefiled the bed of her lord.

Again; a son given by his father, even though his mother be dead, is in law a true son given. If the donation made by a living mother be disapproved, or if she be dead, does not a son given, though the gift be valid

according to this opinion, still belong to his mother; for the property of one cannot justly be annulled by the gift of another? It should not be answered, that, wives being dependent on their husbands, the property of the wife is truly devested by the will of the husband; for this constitutes dependence or subjection. Will and devesture of property co-operating for the same end, become the *joint* causes of the effect: and there is no difficulty in affirming, that the power of making gifts and the like, controlled by the will of another, constitutes dependence or subjection. Then this son given would be competent to perform obsequies and the like for his deceased natural mother? That is admissible.

CCLXXV.

MENU:—He whom his father, or mother *with her husband's assent*, gives to another as his son, provided that the donee have no issue, if the boy be of the same class and affectionately disposed, is considered as a son given, *the gift being confirmed* by *pouring* water.

The particle *vá*, "or," occurring in the text of YÁJNYAWALCYA (CCLXXII), in this text of MENU, and in that of VISHNU (CLXXXV), does it not appear that each of them may severally make the gift? It should not be asserted that the particle *vá* is in this place connective. Were it so, the expression of VASISHT'HA, "nor let a woman give or accept a son," would be unmeaning; the law shows that gift should be the joint act of both parents. It should not be argued that this very maxim is confirmed by the expression "nor let a woman give or accept a son;" else it might be understood that each may transfer his own right. Were such the design, it would be said, "let not one singly give a son," to prevent a donation made by the husband alone: since the text which describes him who is called a son rejected (CCXCI), admits the filiation of a boy forsaken either by his father or his mother, and adopted by a stranger, it might be supposed that one given by either of them became *in law* a son given. It must therefore be affirmed, that the property of both departs if the boy be given by either of them; else, how could a boy forsaken by his mother become *in law* a son rejected?

That inference is denied; for the seeming difficulty is removed if "given by either of them" be explained given by the father, or by the mother with her husband's assent. It should not be objected, that there is no argument on which this induction can be established. The unreasonableness of the ownership of one, being forfeited by the gift of another, is a *sufficient* argument. Admitting that adoption is *in one case* void, because the father's property is not lost by the gift of a mother unauthorized *by her husband*, still the property of the mother, who is subject to the father's power, being devested by his gift, would not her son be incompetent to perform her obsequies and the like? If the property of any one be forfeited by the gift of him to whose power he is subject, then the property of the son in that which was obtained through the indulgence of the father would be devested by the father's *subsequent* donation. Therefore the property of the giver alone is devested by gift: the adoption of a son given is valid by the donation of the father; but, given by the mother unauthorized by her husband, it is void. Such is the induction. But, since it is not a fit practice for a son given to perform the obsequies of his former mother, it is proper to take for adoption a boy whose mother is living, and who is given both by her and by her husband. This brief statement may suffice.

What some affirm to be CHANDÉSWARA's notion is questionable. *They hold*, that if an orphan give himself, he is a son self-given; but if one whose mother is living, and who is bestowed by her, give himself, he is *in law* a son given, as suggested by the particle (*vá*, "or") in the text of YÁJNYAWALCYA (CCLXXII). That the boy's gift of himself confers a right equal to his father's, appears from the definition of a son self-given: and this is reasonable, *say these lawyers;* for, after the death of the father, his whole wealth becomes the property of the son, and a donee has property in that which is given to him by that heir; so, after the death of the father, the son has a proprietary right over himself, and that right is transferred to the donee by his gift: hence a boy whose father and mother are living, but who is forsaken by them, becomes by his own donation a son self-given. Would not a boy given by his mother, after the death of the father, thus become a son self-given? That is admissible, *say these lawyers:* but, in fact, a right equal to that of the father is conferred by the son's donation; and by the mother's gift every claim is cancelled. That opinion is questionable; for adoption consists in *the acquisition of* a right equal to that of the father: if that be effected by the boy's own donation, he is a son self-given; if it be effected by the father's gift, the boy is a son given: such is the distinction. But if a boy be given by his widowed mother, a right equal to that of the father is not effected by her donation, but by the boy's gift of himself; he ought therefore to be considered as a son self-given. It should be here remarked, that, after the death of the father, his son's son, whose own father is dead, has a title to other paternal wealth; but is not acknowledged to have any right over the son, for no such right does exist over a son and a wife: and this is reasonable. Thus much, say the lawyers, *whose opinion was first cited*, has been mentioned by way of illustration.

CULLÚCABHATTA holds that the father and mother should make the gift with mutual consent. The reasoning on which this is grounded must be sought. But in fact that alone is proper. VÁCHESPATI MISRA likewise affirms, that adoption is only valid if the gift be jointly made by both parents.

The mother being subject to the power of her husband, her property is devested by his gift; but it is not so in the case of wealth obtained through favour or the like, because there is no subjection in respect of such property. Thus, if a son be adopted by the husband, the wife has a secondary claim to that child, because property is common to the married pair (CCCCXV); and the line of the maternal grandfather is the ancestry of the adopter's father-in-law. This opinion authors deduce from the gloss delivered by CHANDÉSWARA on a text cited *in a former Book* (Book III, Chap. I, v. LII 1), and from the gloss of CULLÚCABHATTA on the subsequent text (Book III, Chap. I, v. LII 2).

The *Retnácara* contains the following gloss on the text of VASISHT'HA (CCLXXIII): *he who means to adopt a son* must assemble his kinsmen, that the *boy adopted as a* son given may *thereafter* obtain a share. Assembling his own heirs, he may receive, *as his son by adoption*, a boy not remotely allied to him, that is, nearly allied to him, such as the son of his own maternal uncle or the like: this is intended for the *better* ascertainment of the boy's name and class. On failure of *near* kinsmen, he may take one not nearly allied to him; for the name and primitive stock may be ascertained by other positive proof: the particle *éva* here bears the sense of "even." But if doubt arise, that is, if it be doubted by one who adopts a

remote kinsman whether he belong to the sacerdotal class or the like, let him treat the boy like a son by a *Súdra*, employing him only in the business of the house. "*For* through one he rescues many:" because, through one son, the adopter saves many ancestors, therefore he should take for adoption a boy whose class and family are not dubious.

VÁCHESPATI MISRA does not connect the terms "nor let a woman accept a son," with the words "unless with the assent of her lord;" because, even though she have the consent of her husband, a woman cannot adopt a son *given*; for she can make no adoption since she is debarred from presenting an oblation to fire with the mysterious words from the *Véda*, which oblation is a part of the ceremony. That is not the opinion of RAGHUNANDANA, VÁCHESPATI BHATTÁCHÁRYA, and the rest: it is not reasonable that the principal act should be unperformed because an *unessential* part is prevented: since a woman could not make the *requisite* vow,* (for she is prevented from reciting it in holy strains,) she would be incapable of performing a mere voluntary rite. Like the consecration and dismissal of a bull, the adoption of a son may be completed by an oblation to fire performed through the intervention of a *Bráhmana*.† The separation of the terms "nor let a woman give or accept a son," from the words "unless with the assent of her lord,"‡ is thus set aside.

It should be remarked, that, according to VÁCHESPATI MISRA, if a boy who is given by his father and mother consent to the donation, his adoption as a son given is valid; but an only son must not be given, even though he do consent. *No son must be given away against his will;* else the mention of "assent *of persons interested*" (Book II, Chap. IV, v. 2) would be unmeaning. That opinion is disputable; for a boy not older than five years, being ignorant of civil affairs, cannot discriminate between assent and dissent. As for what authors affirm as the opinion of the commentator, that a father must give a son who consents to it, but, if he be an only son, the father shall not give him even though he do consent; that is also questionable: for, since he is not his own master, there is no argument to prove that one who does consent must be given.

The ceremonial of adoption is *now* subjoined. Having given humble notice to the king, and, after making an oblation to fire with holy words from the *Véda*, giving gold and winter-corn in conformity with usage, let the adopter, ascertaining his name, family and class, in the presence of kinsmen, receive a boy for whom the ceremony of tonsure and the like has not been performed, whose age does not exceed five years, and who is given by his father or by his mother with the assent of her husband, provided that they have another son. Let him next perform the sacrifice on adopting a boy, (*putréshti.*) This *putréshti* sacrifice, say experienced lawyers, must be performed by one who maintains a consecrated fire; but, by him who does not maintain such a fire, an oblation must be made with the mysterious words from the *Véda*, as directed by VASISHT'HA. In fact, the oblation to fire with holy words from the *Véda*, which is directed by VASISHT'HA, should precede adoption; the *putreshti* sacrifice, ordained in the *Cálicá purána*,

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* *Sancalpa;* a vow or declaration with which a solemn rite is begun. T.

† To this argument the *Maït'hila* school reply, that the dismissal of a bull cannot be undertaken by a woman. T.

‡ According to VÁCHESPATI MISRA, the text should be thus interpreted: "nor let a woman give a son unless with the assent of her lord, nor accept one *in any circumstances*." T.

should be performed after adoption: this appears from the form of expression used in the texts ("*having made an oblation, he may receive a son;*" and, "*having taken a boy five years old, he should perform a sacrifice.*"*) At present some omit, through laziness, the sacrifice called *putréshti*, in the same manner that the ceremony of combing a wife's tresses is not *now* practised. Thus authors direct *the ceremonial of adoption*.

In the *Cálicá purána*, the texts above cited (CLXXXII and CLXXXIII) are delivered, after premising the son of the body, the son of the wife, the son given, and the son made. "Any other is called a slave" (CLXXXII 2): from this it appears that the claim of the natural father to a son taken for adoption is annulled. "Sons given and the rest" (ibid); the term "and the rest," comprehends sons made by adoption and the like. Hence these must also be adopted under the age of five years; and the ceremony of tonsure and the like must not have been performed under the family name of the natural father; else the boy would be called a slave.

VÁCHESPATI BHATTÁCHÁRYA holds, that, since the text of the *Cálicá purána* declares void the adoption of a boy for whom the ceremony of tonsure has been performed under the family name of the natural father, the adoption of a boy as a son given, who sprung from the same primitive stock with the adopter, is consequently invalid. Others do not respect that opinion; and they affirm, that the text (CLXXXII 1) implies a prohibition against adopting one for whom the ceremony of tonsure has been performed: but there is no harm in taking the son of a near kinsman, and *afterwards* performing the ceremony of tonsure and the like. Their meaning is this; "under the family name," intends the declaration of that name; it must be also understood, that the natural father, *who has performed the ceremony*, was competent to do so; consequently, the family name of the father being only once proclaimed, (for both do not perform the ceremony,) the adoption *of a boy who has not been shorn* is not void.

A man dies after authorizing his wife to adopt a son; the ceremony of tonsure and the rest are subsequently performed by another person sprung from the same original stock with the natural father; still the adoption would be valid, because the ceremony of tonsure was not performed by a natural father competent to do so. It should not be objected, that adoption is void if the triple set of oblations be offered, beginning with the natural father, and proceeding regularly *to the several ancestors;* and the question of competency should not be examined. If the *śrádd'ha* were casually omitted, there would be no defect in the adoption. On this point it is said the text cited (CLXXXII 1) is intended to except the performance of the ceremony of tonsure previous to the acceptance *of a son given;* for, after the adoption, the ceremony of tonsure performed by the natural father is void. It should not be objected, that the word tonsure does not signify the initiating ceremony, but the act of shaving the head and so forth: the word tonsure may with ease be made to signify that particular ceremony. It should not be objected, that, in such a case *as here supposed*, the validity of adoption is denied by the letter of the law. There is no argument to support that opinion; for it has been already noticed, that acceptance in a certain form is the efficient cause of filiation. If a natural father, having given away his son, perform the initiating ceremony under his own family name, through

* According to this gloss, "first," which occurs in the text (CLXXXIII), must be explained 'first subsequent act, immediately after receiving the boy.' T.

mistake or through knavery, then, although the adoption be valid according to the system of law, the text (CLXXXII 2) declares void the relation of the son to the adopter, who ignorantly omits to perform the ceremony of tonsure afresh, because it had been already performed. Such is the opinion of other lawyers.

Some hold that the mere act of shaving the head being *the* principal *part of the ceremony*, and the recital of holy texts by a competent person, and other formalities, being *unessential* parts of it, the ceremony of tonsure is complete by the act of shaving the head, done by the natural father, although *unessential* parts of the ceremony fail. Then the right of tonsure, though performed through mistake by one who supposed the legitimate son of another to be his own, would be valid? That is admissible, say these authors. But their opinion is erroneous; for, the act of shaving the head being suggested by a precept not scriptural,* the performance would be useless; but the person to whom the precept relates must be chiefly considered, since it is ordained that the ceremony of shaving the head shall be performed by a competent person. It should not be argued, that this is a cogent precept, like that for approaching a wife in due season. Since compliance with a cogent precept has no reward, the important object of *initiating the boy into* the sacerdotal class would be unattained: or, admitting it a cogent precept in respect of the ceremony of tonsure, still there can be no such cogency in the ceremony of feeding the child with rice; for, since the body cannot be supported without nourishment, the cogency could only be deduced from a maxim not scriptural. Hence the performance of the ceremony by a competent person being required in the case of one solemn rite, the same must be established in the case of another. VÁCHESPATI BHÁTTÁCHÁRYA observes, in the new *Dwaita nirneya*,† that the ceremony of feeding the child with rice, being performed by a competent person, becomes *a step towards* perfection *or initiation*. Consequently, from the expression "under the family name of the father," is deduced the invalidity of the adoption of a boy for whom the ceremony of tonsure has been performed in a mode which shows that he shares the primitive origin of his natural father, or which shows that he continues the race of his natural father, for the terms "family distinguished by a name indicative of the primitive stock," may signify race or lineage. AMERA exhibits both terms (*gótra* and *vanśa*) as signifying family. That a boy for whom the ceremony of tonsure had been performed by his natural father, with the omission of some *unessential* part, such as the treble set of oblations or the like, may be legally adopted, is thus disproved; and the adoption of a boy sprung from the same original stock is thus shown to be valid: the whole is consistent.

At present, as some lawyers affirm, the adoption of a son accepted under the age of five years, by men of mixed classes, who do not practice the ceremony of tonsure and the like, is valid, even though the shaving of the head be not in any mode effected.

The adoption of a brother's son is valid. To this some object that, since the text of MENU (CCLXXVI) describes a nephew as son *of his child-*

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* Precepts are distinguished into such as are drawn from scripture, and such as are drawn from other sources. These again admit other sub-divisions mentioned in a former note. T.

† The old *Dwaita nirneya* was composed by VACHESPATI MISRA. T.

less uncle, a further adoption as a son given is not valid; their own legitimate offspring being given by the father and mother to each other, does not thereby become a son given.

CCLXXVI.

MENU:—If, among several brothers of the whole blood, one have a son born, MENU pronounces them all fathers of a male child by means of that son.

The objection is ill founded; for CHANDÉSWARA, CULLÚCABHATTA, UDAYACARA, and the *Párijáta*, explain the text, 'sons given and the rest should not be adopted if there be a brother's son.' No one has said that, if a brother's son be adopted through mistake, the adoption is void. As a daughter should not be appointed to raise up male issue, if there be a son begotten in lawful wedlock, but the appointment if made is valid; so, in the present case, or *if a nephew be adopted, the act is good in law.* Admitting the validity of the adoption, shall not another nephew have an equal or *at least* an unequal share, since he also is *considered as* a son? No; for, YÁJNYAWALCYA pronouncing a nephew to be unentitled to participation if there be a brother, the nephew must of course be considered as inferior to a son given or the like. It should not be argued, that, if no son begotten on lawful wedlock, nor wife, daughter, father and the rest, be living, the brother is entitled *to the succession,* and, on failure of him, the nephew and other *heirs,* such as sons given and the rest, have an equal or uneqal title, according to the strength of their claims. The term "sons" being used in the plural number in a text formerly cited (CCXXIII), it appears that sons of every description are entitled to the succession, although a brother be *left.* Accordingly CULLÚCABHATTA observes, neither uterine brothers nor parents, but, on failure of sons begotten in lawful wedlock, the son of a wife, and other secondary sons, are heirs to the *deceased* father; this is meant, for the right of the son begotten in lawful wedlock is deduced from another text (CCXV): but of one who leaves no son properly or improperly so called, nor a wife, nor a daughter, the father is heir; and, on failure of those and of the mother, the brothers shall take the inheritance. Why then is he called a son? Because he delivers *the uncle* from the hell called *put;* else it would be improper to affirm, that sons given and the rest should not be adopted, if there be a brother's son; unless he delivered *his uncle* from the hell called *put,* there could be no sufficient reason for not making an adoption. Consequently, he who is adopted as a son given, has a right to possess the inheritance and perform obsequies, although there be another nephew. He becomes the son of the adopter, under the rule of VISHNU (CLXXXV), which is expounded in the *Retnácara,* "he is son of him to whom he is given by his father and mother." He claims the family of his adoptive father, under the text of MENU (CLXXXI).

"The funeral cake follows the family and estate:" thus, because the family or estate departs, the funeral cake also departs; by saying the funeral cake is extinct, his continuance of the lineage is denied. Hence this phrase, "the funeral cake follows the family and estate," does not signify, that, wherever the family or estate goes, the funeral cake also goes; for, were it so, a military man, or other person, taking the inheritance of a *priest,* who leaves no heir sprung from the same primitive stock, nor a fellow student, nor any kinsman, would offer the funeral cake. Nor does it signify, that the funeral cake is followed by the family and estate; for, were it

so, *the adopted son* would not take the inheritance, but the grandson in the female line would claim the estate and family of his maternal grandfather, like a son. The *possible* misconstruction of the phrase is thus obviated. The same must be also understood in regard to the son of a wife: thus, if he belong to her husband alone, he shall not perform the obsequies of his natural father, since he does not share his estate and family; but the son of two fathers shall perform the obsequies of both.

On this VÁCHESPATI BHATTÁCHARYA remarks, if the right be dubious, and there be no other argument deducible from precept, it is thus suggested, that the funeral cake shall not be offered unless the party can claim either the family or the estate: in this instance it is questioned whether the natural or adoptive father have a right to the funeral cake which must be offered by the son given; *but* it appears, that he shall not offer the funeral cake for his natural father, because he does not assume his family *name* nor *take* his estate. In a case where the right is not dubious, the funeral cake shall be offered by a daughter's son to his maternal grandfather, although he do not claim the estate and family; and if there be a positive ordinance, the funeral cake may be offered to a stranger without taking his inheritance. Hence, the assumption either of the family name or estate, is the ground of the claim; that failing, the sons's right to offer a funeral cake to the natural parent fails: his participation in the family and estate of his adoptive father is a true ground of claim, since he may assert the right of offering a funeral cake *to this parent.* It follows, that the son given claims the family and estate of his adoptive father. The same remark is made by RAGHUNANDANA, in the *Udváha tatwa:* it appears that the son given shall claim the family and estate of his adoptive father alone, since he cannot assume the family name and estate of his natural parent, nor perform his obsequies, which are here signified by the terms "funeral cake" and "funeral oblation." RAGHUNANDANA explains the word *swadhá*, an oblation to be eaten by progenitors; thus, of him who has given away his son, that is, of the natural father, for this is the nearest term, the funeral cake, or oblation to be eaten by a progenitor, is extinct: it follows of course, that the funeral cake shall be offered to the adoptive father.

CCLXXVII.

Brahme purána :—Those sons who are *adopted either as* a son given, a son self-given, a son made *by adoption*, a son bought, or a son rejected, must ever be maintained *with supplies of food and apparel*:

2. They claim *descent from* a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race; on the birth of a child, or on the death *of a kinsman*, they partake of uncleanness for three days.*

Even though the adopted son were a nephew, he partakes of uncleanness for three days *only;* for his original relation by the funeral cake, through his father and mother; being annulled by their gift, impurity for ten days is set aside; and uncleanness for three days arises from his connexion by

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* The first part of this verse has been cited at v. CCLXXIV. On the subject of mourning, see MENU, Chap. V, v. LVIII, and following.

the funeral cake in right of the adoption by the accepter: but when a son is born to him, the adoptive father, his brothers, or any other kinsmen, all become impure for ten days, by reason of the connexion by the funeral cake in right of birth. Consequently, when affinity by the funeral cake arises solely from the gift of the father or the like, the uncleanness lasts three days *only*. Such is the opinion of some lawyers. VÁCHESPATI BHATTÁCHÁRYA holds, that, when sons given and the rest, have children born, or *themselves* decease, the impurity of the adoptive father, and of his father and other kinsmen, last three nights.

VISHNU and other law-givers declare, that a son given is debarred from inheritance by the son of a twice-married woman and the rest: but, according to MENU and the rest, he excludes them. VISHNU and other law-givers consider him as inferior, because he has no natural connexion through his mother: MENU and the rest deem him superior, because he was lawfully begotten; and MENU likewise holds, that the son of the wife, on the supposition of his transcendent virtue, excludes a son given. But VRĬHASPATI declares the inferiority of the son of a wife (CCII). He assigns a higher rank to the son of the body, and to the son of an appointed daughter, because they are lawfully begotten, and are connected *with the father and grandfather* through their mothers (CCXV). Consequently these are highest *in estimation:* "other sons" (CCXV), *who shall only be maintained*, are sons given and the rest: the son self-given is included *in the same description* with the son made *by adoption*. "If pure by class" (CCII); this is intended to forbid the adoption of sons inferior in class. "Irreproachable for their conduct;" this is intended to prevent the neglect of constant and occasional acts of religion. Consequently, the right of the son by a twice-married woman and the rest, to the exclusion of the sons given, bought, or the like, which is propounded by other Sages, alludes to sons so adopted, but who are impure by class, and reproachable for their conduct. The text of the *Brahme purána* (CCLXXVII 1) relates to the same case.

Should not the son of a *Súdra* wife be also contemned, for he is born of a woman unrighteously married (CXLV 2)? Still this son is not procreated by an adulterer: the marriage of his mother is alone unrighteous, not the procreation of the son; on the contrary, there would be sin in not approaching a married *Súdra* in due season: the latter part of the text cited exhibits the period when the sin of marriage, not of procreation, is mature. But the son born of an unmarried woman of the servile class, is *named in law* son by a *Súdra*. He is mentioned by VASISHT'HA as sixth in rank, that is, sixth among the last six, or, in a word, twelfth.

A question here occurs for discussion. Can a son given be heir to a kinsman, or not? On this point some lawyers affirm, that the right of the son given to inherit from a kinsman, which is mentioned by MENU and BAUDHÁYANA, and his superior rank, as ordained by GÓTAMA, VRĬHASPATI, and the *Cálicá purána*, must be considered as relating to a son given, who is endowed with transcendent good qualities; for the expressions used in the text of VRĬHASPATI, "pure by class, and irreproachable for their conduct," denote transcendent good qualities: pure signifies 'absolved from all guilt;' "by acts of religion, by alms, by study of scripture, and by sacrifice, men become pure, *or are absolved from all guilt*." A text of MENU shows, that a son given, being endowed with every virtue, shall take the heritage.

CCLXXVIII.

MENU:—Of the man to whom a son has been given, adorned with every virtue, that son shall take the heritage, though brought from a different family.

In like manner, the succession of a son given, notwithstanding the claims of a son by a twice-married woman and the rest, which is propounded by GÓTAMA, BAUDHÁYANA, and the *Cálicá purána*, must be explained from the concurrent import of the texts of MENU and VRĬHASPATI. It is accordingly declared in the *Brahme purána*, that sons given and the rest shall only be maintained (CCLXXVII); the omission of the son of a pregnant bride, in this text, is founded on the consideration of his affinity in right of birth. It should not be alleged, that the text of the *Brahme purána* relates to culpable sons of these descriptions. It is declared, that, if culpable, even a son of the body does not take the heritage (CCLXIV): hence vicious sons, whether begotten in lawful wedlock or the like, or adopted as sons given and the rest, are excluded from participation; sons so adopted, being void of good qualities, shall have a maintenance: but such sons, being virtuous, shall take the inheritance of a father, or of his kinsman. This is right, say these lawyers. But others contest this opinion, *drawing other inferences* from the subjoined text cited in the commentary on YÁJNYAWALCYA.

CCLXXIX.

VRĬHASPATI, after premising the *Cali* age:—Sons of many different sorts, who were made by ancient Sages, cannot now be adopted by modern men, destitute of eminent powers.

Sons of many different sorts, namely, sons of a wife and the rest, who were made by ancient Sages, cannot now, in the *Cali* age, be adopted by modern men. Why? To this question he replies by an epithet which contains the reason, "destitute of eminent powers." Consequently eminent power, arising from true piety, is stated as requisite to make him a son who is begotten on a *widow, or on a* married woman, *whose husband is impotent:* hence it appears, that such a son ought alone to be considered as superior in rank, for *the filiation of* whom devotion is not *particularly* required. But the filiation of a son given in adoption being admitted by the *'Aditya purána* in the *Cali* age, *eminent* devotion is not required for *the adoption of* such a son, any more than for a son legally begotten. The son given, like the son begotten in lawful wedlock, is therefore superior to the rest.

CCLXXX.

'Aditya purána:—The filiation of any but a son legally begotten, or given in adoption *by his parents, is a part of ancient law abrogated in the* Cali *age.*

"Virtue" in the text of MENU (CCLXXVIII) signifies 'absence of vice;' and "pure by class and irreproachable for their conduct," in the text of VRĬHASPATI (CCII), bears the same import, say these lawyers. That is inaccurate. Sons are of two sorts, *by birth and by adoption;* the son lawfully begotten and the rest, are six sons properly so called; the son

given and the rest, are six sons improperly so denominated: the chief of each set, the son lawfully begotten, and the son given in adoption, are approved in the *Cali* age. Accordingly VRĬHASPATI describes the appointed daughter as superior to the son given; *their relative* superiority and inferiority depend not on piety. This, which is quoted as the opinion of some lawyers, is accurate. But in fact all sons, whether born of a twice-married woman and the like, or given in adoption and so forth, are heirs to kinsmen, as well as to their own fathers; yet, if void of good qualities, they shall not take the heritage of a kinsman: however, they shall have the shares of the paternal estate allotted to them by the *Brahme purána* and other authorities, but some shall have a maintenance only; the due allotment shall be made, as deduced from the several preceding texts. It appears to be the present practice for a son given in adoption, who performs the acts prescribed to his class, whether constant, occasional, or voluntary, such as sacrifice, consecration of pools, and so forth, to take the inheritance of his paternal uncles and the rest. This we hold to be poper.

"Virtue" in the text of MENU (CCLXXVIII) is explained by CHANDÉSWARA and others, science and good conduct: "irreproachable for their conduct," in the text of VRĬHASPATI (CCII), suggests one who is exact in the performance of every act of religion; "pure by class," excepts one who belongs to an inferior tribe. CHANDÉSWARA remarks, on the expression "adorned with every virtue," that the right of succession being suggested by filiation alone, "adorned with every virtue" is intended to show, that he shall take a share even though a son of the body be produced; but if void of virtue, the son given shall have a simple maintenance. It it also proper to affirm, as intended by that expression, that sons given and others, being virtuous, are entitled to the inheritance and so forth, in preference to a son by a twice-married woman or the like, if he be destitute of good qualities; but if all be destitute of good qualities, he who is superior, as nearest allied by birth, shall take a full share of the paternal estate, and the rest shall have the portions allotted to them in the *Brahme purána* and other works. The maintenance directed (CCLXXVII) must consist in the receipt of such a share; else the *seeming* contradictions in the texts of MENU and others, and of YÁJNYAWALCYA and the rest, could not be well reconciled. But some argue, from the concurrent import of the text of DÉVALA (CXC 4), that the text of the *Brahme purána* also relates to sons given and the rest, who are inferior in class *to their adoptive fathers*. This brief exposition may suffice.

SECT. IX.—*On the Son Bought.*

He is eighth according to YÁJNYAWALCYA; for, immediately after describing the seventh, or son given, he thus describes the son bought: "he who is sold by them *(by his father and mother)*, shall be considered as a son bought" (CCXXXVI). Although a son given and a son bought equally become *the* property *of the adopter* by the voluntary act of the original owner, he considers the son bought as inferior to the son given, because the sin of selling offspring is greater. Many legislators concur in deeming him inferior. The rules respecting him are similar to those concerning the son given. "And the rest," in the texts of the *Cálicá purána* (CLXXXII 2, and CLXXXIII), comprehend the son bought, and the rest. VISHNU names him as ninth in rank (CLXXXV).

CCLXXXI.

BAUDHÁYANA:—He is called a son bought, who is received, for the sake of male issue, from the hands of his father and mother, or either of them, *after paying a price.*

"Or either of them," if he be received from the hands of his mother, the consent of her husband must be required in the form which has been mentioned in the preceding section. By the expression of VASISHT'HA, "let not a woman give a son" (CCLXXIII), which has a secondary sense without abandoning its primary signification, sale and the like is definitely intended; for, by parity of reasoning, there is occasion for the assent of the husband, since HÁRÍTA maintains, that a woman can claim no independence in the receipt or disposal of wealth. This is taken from the *Retnácara.*

"After paying a price" must be supplied; for that corresponds with the text of YÁJNYAWALCYA, since the verb *crí*, joined to the preposition *vi*, signifies delivery preceded by payment of a price, and is *so* employed *in that text.*

CCLXXXII.

MENU:—He is called a son bought, whom a man, for the sake of having a son *to perform his obsequies*, purchases from his father and mother, whether the boy be equal or unequal *to himself in good qualities; for in class all adopted sons must be equal.*

"Unequal;" not of the same class. The *Párijáta.*

Neither should a child of inferior, nor one of superior class, be adopted as a son; the mention of "equal or unequal" must therefore relate to good qualities.

The Authors of the *Méd'hátit'hi* and *Pracása.*

CULLÚCABHATTA quotes the following text of YÁJNYAWALCYA:—

CCLXXXIII.

YÁJNYAWALCYA:—This law (that, on failure of the best, the next best shall offer the funeral cake, and possess the heritage) has been propounded by me in respect of sons equal in class.

Thus, since the texts of both have the same purport, equal class is required in all cases, excepting that of a son by a *Súdra.* In like manner equality of class is also assumed in the case of a son by a twice-married woman, and the rest.

He is called a son bought, who, being sold by his father and mother, is received for the sake of male issue, even though he be unequal in class; for the text of MENU expresses, "whether the son be equal or unequal."

The *Dípacalicá.*

For the commentator thinks, that, if equal, in the definition of a son given, as delivered by MENU (CCLXXV), signify "of the same class," it ought to signify the same in this place also; if there also it signify equal in good qualities, as it is expounded in the *Méd'hátit'hi*, that is not pertinent, when the good qualities of a child five years old must be examined. Were

this *interpretation* admitted, would there not be an inconsistency with the text of YÁJNYAWALCYA (CCLXXXIII)? No; for that text may be expounded, "in respect of eleven sons, omitting the son bought." But, in fact, a child of a lower class may truly become a son *by adoption;* for DÉVALA declares, that sons of a lower tribe must live under him *of equal class* (CXC 4). The expression of YÁJNYAWALCYA, "in respect of sons equal in class," is intended to preserve the order of succession: for, if the son by a twice-married woman belong to an inferior tribe, and the son given be superior to him, then the adopted son, *who is of superior class,* shall alone take the inheritance; but if the son by a twice-married woman were equal in class, he would be the legal heir.

This son bought is son of the purchaser, and participates in his family and estate. He is superior to the son made *by adoption,* and the rest. This shall be hereafter discussed. As for the text of YAMA (CXCI 4), which describes the son bought as fifth, that is, as fifth among the last six, or the eleventh *of the twelve sons,* that must be understood when he is inferior in good qualities to the son rejected, and the rest. The text of VISHNU, which places him ninth (CLXXXV), must be also adduced when the son of a pregnant bride is *more* virtuous *than he.* According to the *Brahme purána,* the son bought shall have a tenth part *of such share as is allotted to the son of the body* (CCXVII 3).

SECT. X.—*On the Son made by Adoption.**

He is ninth according to YÁJNYAWALCYA; for, immediately after describing the eighth, or son bought, he describes this son as one who is made by the adopter's own act (CCLXXXVI).

CCLXXXIV.

BAUD'HÁYANA:—He whom a man adopts, the boy being equal in class, and consenting *to the adoption,* is a son made.

One who consents; that is, one who thus acquiesces, "I will become his child; he shall take me as his *own* son." The *Retnácara.*

He is inferior in rank to the son given, and to the son bought, because he is not given away by his father and mother, to whom he belongs. In fact, the boy is bereft of father and mother, or is forsaken by them; or, both being living, they *tacitly* consent to the adoption, as a man acquiesces in another's enjoyment of his land. Or this son is, *as it were,* made of *cúsa* grass and the like, endued with life by the power of devotion. If he do not consent to become son *of the adopter,* what shall be the consequence? The

* Sons are thus adopted in *Mit'hilá;* the practice of adopting sons given by their parents was there abolished by SRI'DATTA and PRATIHASTA, although the latter had been himself adopted in that manner. Their motive was, lest, a child already registered in one family, being again registered in another, a confusion of families and names should thence ensue. A son adopted, in the form so briefly noticed in the present section, does not lose his claim to his own family, nor assume the surname of his adoptive father: he merely performs obsequies, and takes the inheritance. In *Goura,* on the contrary, and in most other countries, sons are only adopted in the form discussed in the eighth section; but the *Góswámís,* and other devotees, who lead a life of celebacy, buy children to adopt them in the mode which is briefly considered in the ninth section. The practice of appointing brothers to raise up male-issue to deceased, impotent, or even absent husbands, (see Sect. IV.) prevails in *O'risa* (O'dra-désa). T.

boy does not become *his* son. Or, as GANGÁ consented to become daughter of JAHNU, so, if any one accept the relation of son to another, and the other admit him as such, then he becomes son of two fathers. His precedence above the son self-given, and the rest, supposes him endued with good qualities.

CCLXXXV.

MENU:—He is considered as a son made, [*or adopted*, whom a man takes as his own son, the boy being equal in class, endued with filial virtues, acquainted with *the* merit *of performing obsequies to his adopter*, and with *the* sin *of omitting them*.

According to CULLÚCABHATTA, "equal," or similar, here signifies equal in class. It is explained in the *Médhátit'hi*, endued with qualities suitable to the family. "Acquainted with merit and with sin;" this is explained in the *Retnácara*, knowing the merit of performing obsequies to his father and mother, and the sin of omitting them: "endued with filial virtues," that is, with the virtues of obedience and the like.

Being similar to a son given, he ought to be adopted under the age of five years, as ordained in the *Cálicá purána* (CCLXXXIII). Nearly the whole form directed for a son given should be observed. It must be affirmed, that his future eminence in literature is conjectured from the ready apprehension and docility discovered by him at the age of five years. All this is *vague and* complimentary, for it is not requisite to filiation.

This son claims the estate and family of his adopter; the text of the *Brahme purána* (CCXVII 2) allotting a fifth part to the son made, supposes him endued with transcendent virtue; and so do the texts of MENU and the rest. This brief statement may suffice.

SECT. XI.—*On the Son Self-given.*

He is tenth according to YÁJNYAWALCYA; for, immediately after describing the ninth, or son made, he proceeds to describe the son self-given.

CCLXXXVI.

YÁJNYAWALCYA:—He who is sold by them (by his father and mother), shall be considered as a son bought; a son made is adopted by the act of the adopter himself, but he who gives himself is a son self-given; and one received, while yet a fœtus in the womb of his mother, is called the son of a pregnant bride.

VISHNU says, "the tenth is a son self-given" (CLXXXV); to which it is added in the *Retnácara*, he is son of the man to whom he gives himself.

CCLXXXVII.

MENU:—He who has lost his parents, or been abandoned by *them* without just cause, and offers himself to a man *as his son*, is called a son self-given.

"Offers himself;" gives himself, saying, "I am thy son."

The *Retnácara*.

He who, having lost his father and mother, or being forsaken by them without just cause of abandonment, gives himself to a man *as his son*, is

called a son self-given, and is considered by MENU and the rest as son of that man. CULLÚCABHATTA.

He is inferior to the son given, and to the son bought, because he is only given by himself, having acquired a secondary power *over his own person.* The son made *by adoption,* say some lawyers, is distinguished from this son, because he only acquiesces in the adoption which is the act of another, and does not give himself. This son may, *however,* claim precedence above the son made. The *Brahme purána* assigns a twelfth part to him.

SECT. XII.—*On the Son of a Pregnant Bride.*

He is eleventh, according to YÁJNYAWALCYA; for, immediately after describing the tenth, or son self-given, he thus describes this son; "and one received while yet a fœtus in the womb of his mother, is called the son of a pregnant bride" (CCLXXXVI); that is, one accepted while he remained in the womb *of his mother:* it is thus intimated, that he is son of him who marries her. VISHNU says, "the seventh is the son of a pregnant bride; and the male child of a woman espoused while pregnant, is son of the man who marries her" (CLXXXV).

CCLXXXVIII.

MENU:—If a pregnant young woman marry, whether her pregnancy be known or unknown, the male child in her womb belongs to the bridegroom, and is called a son received with his bride.

The author of the *Pracása* remarks, that the solemn rite *of marriage* does not take place; for a text declares, that holy nuptial texts are applied solely to virgins (Book IV, v. CLXVIII); but this woman is not a virgin, since she has had intercourse with man. On this subject ancient authors observe, that in this place "marry," relates to the form of marriage directed in the *At'harvan véda,* which is ordained by scripture for women who are not virgins, and which is now practised by *Súdras* of the lowest rank, and by others. Since holy nuptial texts are confined to virgins, this term, "marry," intends the oblation to fire on the fourth day, and other rites celebrated without texts. Thus CHANDÉSWARA. But, in fact, since the text expressed only "received while yet a fœtus in the womb," acceptance alone is determinately meant: the requisites *of this filiation* do not extend to the oblation to fire; else, were that oblation casually omitted during pregnancy, the child would not be a son received with a bride, and might be supposed to become son of his maternal grandfather. But he is not son of his maternal grandfather; for, like ornaments and the like, the child was given away by him with his daughter. He is son of the bridegroom alone; not received *as such* in right of birth, for he is not produced from the seed *of his legal father,* nor from a receptacle *appertaining to that father at the time of procreation;* but becomes his son mediately, in consequence of acceptance, because the mother, who is owner of the child, is transferred to the bridegroom by the maternal grandfather's gift.

Being deficient in good qualities, he is inferior to the son given, and the rest. The offspring of an unmarried girl, considered as son of him who *subsequently* marries her, may be also deemed inferior to that son. If the natural father be known, the child belongs to him alone. The *Brahme purána* (CCXVII 3) allots a ninth part to the son of a pregnant bride. This brief exposition *may suffice.*

SECT. XIII.—*On the Son Rejected.*

He is twelfth, according to YÁJNYAWALCYA; for, immediately after describing the eleventh, or son of a pregnant bride, he thus describes this son:

CCLXXXIX.

YÁJNYAWALCYA:—He who, being forsaken *by his natural parents*, is received by another, shall be considered as a son rejected.

VISHNU (CLXXXV) says, "the eleventh is the son rejected;" being forsaken by his father and mother, he becomes the son of him by whom he is received. The text must be so supplied.

CCXC.

VASISHT'HA:—The fifth is the son rejected, whom a man receives as his son, the boy having been forsaken by his father and mother.

The fifth rank is mentioned, as is observed in the *Retnácara*, meaning the fifth among the last six; consequently he is eleventh in rank.

CCXCI.

MENU:—A boy whom a man receives as his own son, after he has been deserted *without just cause* by his parents, or by either of them *if one be dead*, is called a son rejected.

"Deserted;" abandoned. The desertion may be caused by utter inability to support the child, or by some defect *in* him; he must be received as a son, not *merely* received from a willingness to maintain the child.

The *Retnácara*.

The child is deserted with *some* such thoughts as these: "he is thrown away like the chaff of corn; any man may take him or not as he pleases; I have no occasion for this child."

The son self-given is superior, because he is given by a secondary owner, namely, himself; but this son is inferior, because he was similar to a waif, not being then recognized as son of any man; for, in this world, the finding of a waif is considered as a less perfect title than a gift. But in the case of a son made, the child being adopted by another, although the father and mother were living, their right is forfeited by neglect, like the right of a man to a chattel adversely enjoyed by another. As in the case of land, that neglect is an act of will, which may be expressed in these words, "this land is possessed by another; let him enjoy it, and let it become his absolute property;" so in the case of a son, the act of the will may be thus expressed, "this man adopts him for his son; let him do so, and let the child become his son." Consequently, the principal owner tacitly consenting, the son made *by adoption* is therefore superior to one self-given, and to him who is rejected *by his natural parents*: in the case of a son rejected, the owner assents to the loss of his own right, but not to the substituted right of another; in the case of a son made, *he* also *assents* to the substituted right of another. Were it so, what difference would there be between a son given and a son made, since the owner equally assents in both instances to the loss of his own right, and to the substituted right of another? Neglect is the foundation of the *substituted right to a* son made, but gift *is the foundation* of *such right to* a son given: the difference between them is this; donation

is an act of the will contemplating the transfer of property to another, and which may be thus expressed, "let this become his property;" neglect is an act of the will contemplating property arising from occupancy, and which may be thus expressed, "let this, which is occupied by him, be lost to me, and become his by occupancy." The neglect may be of a different nature, solely contemplating the loss of right, and which may be thus expressed, "let my right be forfeited:" this is the foundation of the ***substituted right to a*** son rejected. In the former instance of neglect, property vests in the actual occupant *alone;* in the last instance, it ***subsequently*** vests in any occupant whomsoever.

The *Brahme purána* (CCXVII 2) allots a seventh part to the son rejected. This brief exposition may suffice.

SECT. XIV.—*On the Son by a 'Súdra.*

He is not particularly noticed by YÁJNYAWALCYA. Since "anyhow" in the text of VISHNU (" the twelfth is a son anyhow produced," v. CLXXXV), is expounded in the *Retnácara* ' by a *Súdra* woman married or unmarried,' the son of a *Súdra* wife is also considered as thirteenth in rank. His share of the inheritance has ***indeed*** been propounded by YÁJNYAWALCYA (CXLII). The concurrent import of the texts of MENU and VASISHT'HA is the foundation on which the term " anyhow produced" is restricted to the son procreated on a *Súdra* woman.

The text cited in a former chapter (CLXXVII) is inserted by MENU in the place where sons of twelve sorts are defined, immediately after describing eleven sons. *Páraśava* (a living corpse) is a name for the son of a *Bráhmana* by a *Súdra* woman. It is thus explained in the *Retnácara*; "though fulfilling ***his duty***" (*párayan*), that is conferring some benefit on his supposed father, " he is even as a corpse," because the benefit is inconsiderable. The word (*párayan*) may also signify "living."

CCXCII.

VASISHT'HA:—The sixth is the son by a '*Súdra*.

Sixth here relates to the last six. The *Retnácara*.

CCXCIII.

BAUDHÁYANA:—A son begotten through lust on a '*Súdra* woman by the chief of twice-born men, is called a living corpse (*páraśava*).

The share of a son by a married '*Súdra* had been propounded by MENU, YÁJNYAWALCYA, and others. MENU (CLXXVII), and VISHNU (CLXXXV) now speak of a son by an unmarried *Súdra*. Accordingly MENU, immediately ***after this text*** (CLXXVII),* notices the participation of a son begotten by a man of the servile class on his female slave (CLXXVI); "man of the priestly class" in this text signifies a *Bráhmana*, *Cshatriya*, or *Vaisya*. But YÁJNYAWALCYA has not allotted any share to the son of a twice-born man by a female slave. The share of such a son, who is ***consequently*** of a different class from his father, and far inferior in rank to other sons (CCLXXXIII), must be deduced from the texts of other Sages. The law is thus explained; and we hold this reasonable: JÍMÚTAVÁHANA also concedes ***to this opinion.***

* MENU, Chapter IX, v. 178 and 179.

Sect. XV.—*On the Adoption of Sons.*

CCXCIV.

Smriti, cited in the *Retnácara*:—Sons by women of the servile class, though they be *'Súdras* and slaves, are in some instances *deemed the legal sons* of priests; and so they are of kings consumed by curses, and ever doomed to perish:

2. And sometimes they are *considered as the legal issue* of men who seek wealth, or practise warfare.

The supposed impossibility *of their becoming legal sons* of these men is denied. The *Retnácara.*

Hence, if a man be destitute of other offspring, his child by a woman of the servile class must be acknowledged as his son.

CCXCV.

If there be a son of the body, or a son of an appointed daughter;

2. The son of a wife and the rest, of eleven sons, must be considered as belonging to distinct families, and as perpetuating a separate race.

3. All such sons shall ever perform obsequies and other rites for those fathers, like slaves, *or like men of the servile class.*

If there be a son of the body, or if there be a son of an appointed daughter, then the son of a wife and the rest merely propagate a family; such is the construction. "Like slaves," in the form which should be practised by a slave, *or by a man of the servile class.* The *Retnácara.*

CCXCVI.

A son of concealed birth, the son of an unmarried woman, the son received with a bride, the son by a *'Súdra*,

2. And the son by a twice-married woman, are five who are shunned by men of the commercial class, through apprehension of a fine *to be paid* to the king; all the rest are likewise heirs *of twice-born men.*

It is thus declared possible that men of the commercial class may have sons considered as such in a secondary point of view. The *Retnácara.*

"Likewise" alludes to the sons improperly so called. It is thus declared possible, as is observed in the *Retnácara*, that a subsidiary son may be adopted by a priest, a soldier, or a merchant.

CCXCVII.

Men of the servile class, acting as slaves, living on food supplied by another, and subject in their persons to the dominion of a master, can in no instance have a son.

2. The male child who is begotten by such a slave, becomes himself a slave.

It is a notion intimated in the *Retnácara*, that since the text of MENU (Book III, v. LII) must be considered as declaratory of the subjection of a slave to the will of his master, he is subject to his control even in the adoption of a son, and that the child is in like manner subject to the dominion of his master.

CCXCVIII.

MENU:—On failure of the best, *and* of the *next* best *among those twelve sons*, let the inferior in order take the heritage; but if there be many of equal rank, let all be sharers of the estate.

Among the sons abovementioned, *namely*, the son of a wife and the rest, *all* being virtuous, *let the best take the heritage;* on failure of virtuous children, a worse son, deficient in good qualities, is entitled to the succession. But if there be many of various descriptions, such as the son of a wife and the rest, who are *all* endued with equal good qualities, they are all equal sharers of the estate.

"Similar" is explained in the *Retnácara*, equal in good qualities, or in unessential properties. The *author's* notion *of the purport of the text* is the same. Consequently, MENU intends that the rule of succession to heritage and the like should be drawn from the different degrees of virtue, without attending to the difference of the form in which a son is adopted. This is also the opinion of other legislators; but they have described a particular order, on the supposition of proportionate good qualities. Thus some explain the text. *According to others*, "on failure of the best, and of the next best," that is, of the first mentioned respectively, the inferior in order, or next mentioned, succeed *to the heritage*. Thus YÁJNYAWALCYA directs, that, "on failure of those first mentioned, the next in order shall give the funeral cake, and claim the heritage" (CLXXXIX).

CCXCIX.

VISHNU:—Among these the first in order is preferable; he alone shall take the heritage, and shall support the rest.

CCC.

NÁREDA:—The first in order are severally considered as eldest or superior, the last are respectively deemed inferior; on the death of the father, they succeed in order to his estate.

2. On failure of the first, and next in rank, he who is inferior *in the next degree* shall take the inheritance.

CULLÚCABHATTA also says the same: he thus expounds the last half of the text of MENU (CCXCVIII); 'if there be many sons of the same description, such as sons by a twice-married woman or the like, they shall all take and divide the heritage.' He explains similar, "equal in rank," being sons of a twice-married woman or the like. In the gloss of the *Retnácara*, the term "unessential properties," alludes, say these other lawyers, to the rank as sons by a twice-married woman or the like. According to this opinion, the son of the wife and the rest are never equal to the son of the body. That opinion only is accurate. Accordingly the *Brahme purána* assigns the whole estate to the son of the body though last born

(CCXVII); that is, if partition be made by a father, he shall give to his son born in lawful wedlock the full share directed under that head: he shall give the third part of such a share to the son of the wife, and reserve for himself as much as he pleases, or a double share, (for there is a difference of opinion on that point): in like manner, he shall give the fourth part of a share to the son of an appointed daughter, and their due allotments to the rest. If there be many sons, namely, a son of the wife, a son of the body, an appointed daughter, and so forth, let him so distribute the estate that the son of the body may have twice as much as the son of the wife, thrice as much as the appointed daughter, and so forth, and *the father* himself have twice as much as his son begotten in lawful wedlock. The natural distribution has been propounded by YÁJNYAWALCYA and others. The form *of partition*, expressly mentioned in the discussion on sons of twelve descriptions, must be observed: but if there be a difference of good and bad qualities, the form of distribution directed in the *Brahme purána* and the rest must be adopted.

It is recorded in *Puránas* and other works, that a king, having purchased a boy named ŚUNAHSÉP'HA, who was sold by his father, attempted to sacrifice him to the divinity; but the boy, being saved from death by divine interposition, became son of the sage VISWÁMITRA: in what form did ŚUNAHSÉP'HA become his son; for he was not a son given, since the boy was not bestowed by his father on VISWÁMITRA? He was a son self-given; for, a boy having given himself as a son, when the right of his father and mother was annulled by their leaving him to die, or by any other means, the definition of a son self-given is applicable to him. This brief explanation may suffice: to expatiate would be vain.

Among the twelve descriptions of sons begotten in lawful wedlock and the rest, any others but the son of the body and the son given are forbidden in the *Cali* age. Thus the *Aditya purána*, premising "the filiation of any but a son lawfully begotten or given in adoption *by his parents*" (CCLXXX), proceeds: "These *parts of ancient law* were abrogated by wise legislators, as the cases arose at the beginning of the *Cali* age, with an intent of securing mankind from evil; *that is, with an intent of* preventing the guilt of mankind; the term bears the sense of prevention, as in the phrase "smoke made as a precaution against gnats;" for that is one of the senses ascribed to this term in the dictionary of AMERA. The meaning therefore is, mankind would be culpable if the practice of raising up a son on the wife of a kinsman and so forth were *now* followed. So VÁCHESPATI BHÁTTACHÁRYA expounds the phrase; but others explain the terms 'for the sake of preserving mankind;' the word used signifies 'intend,' as in the phrase "wood intended for a post to be erected as a memorial of a sacrifice performed." Consequently the is meaning this; mankind would perish if the practice of raising up a son on the wife of a kinsman and so forth were *now* followed. Formerly, men proceeded, without amorous dalliance, *to procreate issue* on a brother's wife, (who is similar to a mother or a daughter-in-law), with the sole view of raising up offspring to a brother: now, men being governed by lust and grovelling appetites, and their passions being excited by simply looking on the face of a woman in private, they would repeatedly approach *a brother's widow* under pretence of raising up issue to him; mankind would be thus culpable, and perish through the prevalence of sin. In like manner sufficient reasons may be assigned for the prohibition of appointing a daughter and so forth. Again, by the term "powers" in the text of VRĬHASPATI (CCLXXIX) is meant, not only devotion, but the consequence of it, namely command over the senses.

Among these twelve descriptions of sons, we must *only* now admit the rules concerning a son given in adoption and one legally begotten. The law concerning the rest has been inserted, to complete that part of the Book; as well as for the use of those who, not having seen such *prohibitory* texts, admit the filiation of other sons. Thus, in the country of *'O'dra* ('O'risa), it is still the practice with some people to raise up issue on the wife of a brother.

CCCI.

MENU :—These eleven sons (the son of the wife and the rest as enumerated) are allowed by wise legislators to be substitutes *in order* for sons of the body, for the sake of preventing a failure of obsequies.

Hence a son given and the like should only be adopted on the possibility of a failure of obsequies, not if they can be *otherwise* performed. If one who has a son legally begotten, adopt a son given, is the adoption valid or not? and what occasion is there for its validity, since the obsequies must be performed by the son legally begotten? There is occasion, for the purpose of removing the doubt whether the obsequies shall be performed by the son given if the son of the body afterwards die. To this some reply, that sons given and the rest being described as substitutes, and substitution being only admitted on the failure of the principal, the adoption of the son given is void, because there was not at that time a failure of the principal; and if the son of the body afterwards die, the obsequies shall be performed by the wife, or by a collateral heir. That is wrong; for the son given, not the adoption of him, is described as a substitute: there is no difficulty in saying that, on failure of the principal, or son legally begotten, the son given shall act as such. Accordingly SRÍD'HARA SWÁMÍ, in his gloss on a verse of the *Bhágavata* (CCXVI), quotes a text of law on the benefit arising from a multitude of sons, to explain the motive for desiring many children, when a subsidiary son *is adopted* even though a principal one be living: "Many sons are to be desired, that some one of them may travel to *Gayá*."

The adoption of a son given, although a son of the body be living, being thus valid, he shall have a third part as his share, in the same manner with a son given, subsequently to whose adoption a son of the body was born (CXC). "Heirs" (CXC 3); that is, entitled to a full share. "Shall have as their share one-third of the property" (CXC 4); that is, they shall have as a share one-third part of that which is receivable by the son legally begotten. What shall be the share? Shall the son given receive four or three *suvernas* out of twelve which compose the share received by the son of the body? or shall the son of the body receive twice as much as is received by the son given? To this it is answered, if it be the meaning of the law that he shall take one-third part out of the share which is received by the son legally begotten, then what would be the consequence if there be many such? the son given would receive an excessive sum if he took a third part from each. Nor shall he take one share out of the collected wealth; for, though single, he would not receive a *full* third part, and the legitimate sons would have more *than their due allotments.* Neither is the second supposition right; for, were it so, he would take a quarter *instead of a third.* Thus the last supposition must be admitted. It may be illustrated in this manner: in the case of partition made by a father, according to the opinion of JÍMÚTAVÁHANA and the rest, let two sons legally begotten take eight *suvernas* each out of thirty-six

inherited from a paternal grandfather, let the father take sixteen *suvernas*, and the son given four. The meaning of the text is, that an adopted son shall have a third part of the share appertaining to a son legally begotten. Some hold, that, in a partition of hereditary property made by a father, who has one son given and two sons begotten in lawful wedlock, the whole estate shall be divided into thirteen parts, of which six belong to the father, three to each of the two sons legally begotten, and one to the son given: *according to these lawyers*, the meaning of the text is, that an adopted son shall have a third part of such a share as is receivable by a son begotten in lawful wedlock. That is wrong; for it is not deduced, from the phrase "shall have as their share one-third part," that they shall have a share equal to one-third part *of what is received by the son legally begotten*. As for the exposition, that an adopted son shall take one-third part of such a share as is receivable by this son in right of his legitimacy; that is wrong, for there would be none to take the remaining two-thirds. If the remaining two-thirds were again divided, nothing would prevent a second remainder of two-thirds; and that cannot be the sense of the text.

Lawyers justify the text of the *Brahme purána* (CCLXXVII), as relating to the same subject with the phrase, "those of a lower class must live under him, with a provision of clothes and food only" (CXC 4). That is wrong; for, were it so, the particular mention of sons given and so forth, would not be pertinent. Consequently that text relates to a son given and others deficient in virtue, and it shows, that if any one of six sons, namely, the son of the body and the rest, exist, he has a right to take a full share and to perform obsequies, and the son given or other adopted son shall have a third part for his maintenance.

Since the text of MENU (CCLXXI) must relate solely to the son given, or other child adopted while a son legally begotten exists, for it is of course declared by the text of DÉVALA, that an adopted son shall have a third part if a son of the body be afterwards produced, does it not follow, that the adoption of a son given, being made by one who has a son legally begotten, is invalid? CULLÚCABHATTA has also remarked, that a son of the wife and the rest ought not to be obtained if there be a son of the body or an appointed daughter: does not this text relate to the same subject? It should not be argued, that, like the rule, "common property may not be given away by any one parcener, and wealth necessary for the support of the family may not be aliened *even by a single owner*," this text is intended to forbid such adoption by one who has a son, not to declare the adoption void. Since it is demonstrably right to establish a moral offence in depriving the family of support, sin, not the invalidity of the gift, is thence deduced; but the text of MENU contains nothing prohibitory against such an adoption: for, sons given and the rest, who are produced from the manhood of others, that is, others than their *adoptive* father, and from the wife of another, (for the expression is merely illustrative;) these sons, it is said, being produced from another origin than the adoptive father's own seed and field, are *in truth* sons of him from whose manhood and wife they sprang, not sons of the adopter: it follows, therefore, that the adoption is void.

If this be alleged, the answer is, still the sense of the text would be irrelevant: why should not property arise in a son given, to one who has male issue, as well as in land given to him? and if property do arise, why should he not be a son capable of inheriting the estate and performing obsequies? It makes no difference whether the son of the body be born

before or after the adoption. Sacred story records, that MENU appointed his daughter to raise up a son, although he had male issue. It should not be argued, that she merely propagated the family. Filiation being valid if she perpetuate the race, nothing can bar the right of succession vested by divine power. Accordingly it is observed in the *Retnácara*, on the last part of the text above cited, "they belong in truth to the father from whose manhood they severally sprang, and to no other" (CCLXXI), that their claim as principals being denied, their claim as substitutes is hinted; "they are principal sons of no other:" the text must be so supplied. It should not be objected that the preceding text (CCCI) contains a vain repetition. It completes the sense. What then is the claim of one who is a substitute for a son? It consists in the right of performing the offices incumbent on a son, if there be no principal one. Admitting this inference from the opinion delivered in the *Retnácara*, still adoption is prohibited according to the opinion of CULLÚCABHATTA, who holds that this ought not to be followed as a practice which is justified. It not should be argued, that by so acting a moral offence would be committed. There is no argument on which a moral consequence can be established when a temporal effect may ensue. But here the intention of the precept is to forbid adoption then only when there is no motive for it; for the benefit desired, namely, deliverance from the hell called *put*, is obtained without adopting a son given, and through him, therefore, that purpose is not effected: but one who desires numerous issue for other purposes besides deliverance from the hell called *put*, may adopt a son given and the rest, although he have one legally begotten. SRÍD'HARA SWÁMÍ and others have said as much. The *Retnácara* and *Párijáta* expressing, that a son given and the rest should not be adopted if there be a brother's son, it must be understood that the prohibition concerns one who merely desires male issue for the sake of deliverance from the hell called *put*. This justifies the fact recorded in the *Bhárata* and other works, that PÁNDU, having other male issue, accepted of BHÍMA, ARJUNA, and other sons of his wife.; and he did so although he had nephews. It should not be objected, that brother's son positively intends the son of an uterine brother only; and "brothers of the whole blood," in the text of MENU (CCLXXVI), signifies brothers by both the same parents. The dual number is not supposed in an apposition of this form, unless there be special grounds of implication. It should not be argued, that the proceeding of PANDU, who was acquainted with the legal prohibition, is a ground of such implication. His conduct is declared to have been influenced by the desire of having a son endued with strength, and one skilled in jurisprudence and philosophy. VÁCHESPATI BHATTÁCHÁRYA also admits the adoption of a son given, although there be a brother's son. CULLÚCABHATTA, however, expounds "brothers of the whole blood," brothers by the same father and mother. MENU and VISHNU declare, that a son delivers his father from the hell called *put*.

CCCII.

MENU and VISHNU:—Since the son (*tráyaté*) delivers his father from hell named *put*, he was therefore called *puttra* by BRAHMÁ himself.

CCCIII.

HÁRÍTA:—A certain hell is called *put*; and, he who is destitute of male issue, is there tormented: a son is therefore called *puttra*, because he delivers his father from that region of horror.

CCCIV.

VRĬHASPATI:—Because a son delivers his father from the hell called *put*, even by the sight of his countenance, therefore is a man solicitous for the birth of a son.

2. A son's son, and the son of an appointed daughter, both contribute to the attainment of heavenly bliss: both are equally pronounced fit for inheritance, and oblations of funeral cakes.

CCCV.

MENU and VASISHT'HA:—On him he devolves the burden of debt, by him he procures immortality, through him he joyfully becomes exonerated from every debt to living progenitors.

CCCVI.

SANC'HA and LIC'HITA, and PAIT'HÍNASI:—By a son, however produced, a father prospers; through his oblation of funeral cakes, he becomes exonerated from debt to his progenitors.

CCCVII.

HÁRÍTA:—He who has a son pure, capable and virtuous in the first period of life, and perfected by the correction of his own defects, transports his ancestors over the abyss *of death.*

CCCVIII.

SANC'HA and LIC'HITA:—The perpetual support of a consecrated fire and the like, the scriptures and sacrifices rewarded with ample gratuities, do not procure the sixteenth part of the benefit arising from the birth of an eldest son.

2. Heaven is attained through the means of him who is celebrated as the fire of a son and of a grandson, and whose many children and himself, while living, had completed the *study of* scripture, and *the performance of* sacrifice.

With whom scripture and sacrifice is not incomplete; whose study of the *Véda* and performance of sacrifice fail not: and that if he have many sons: such is the construction. It consequently appears to be a benefit arising from numerous issue, that many sons, and the father himself, fail not in the study of scripture and performance of sacrifice. "Many sons are to be desired, that some one of them may travel to *Gayá*." Hence sons of various descriptions may be adopted by one who desires numerous offspring.

CCCIX.

SÁNC'HA and LIC'HITA, VISHNU and HÁRÍTA:—By a son a man obtains victory over all people; by a son's son he enjoys immortality; and, afterwards, by the son of that grandson, he reaches the solar abode.*

* MENU, Chapter IX, v. 187, cited at v. 11.

CCCX.

YÁJNYAWALCYA :—Through a son, a son's son, and the son of a grandson, the father or ancestor obtains *bliss in other* worlds, immortality, and heaven ; but the double set of oblations and the funeral cake are offered by a man's own son and other descendants, whether principal or subsidiary.*

Heaven signifies the solar abode; for the import is the same with that of the preceding text.

CCCXI.

VASISHT'HA :—The endless abodes are allotted to those who leave male issue; it is recorded, that "heaven is not for him who leaves no male progeny." Enemies therefore pronounce *this curse*, "May they be childless, and become evil spirits!" The want of male issue is the great cause of destruction; therefore is a son desired.

It is declared in the *Véda*, that heaven is not for him who leaves no male issue. It consequently appears that celestial bliss is attained through a son; and that is made evident by the text of YÁJNYAWALCYA. "The endless abodes, &c.," since the purport is the same, they are allotted to those who have grandsons; the word "son," here signifies offspring in general. It is thus declared that sons and other male descendants are most desirable. The Sage proceeds to show eternity *enjoyed* through the means of a son: childless men become invisible giants or demons; certainly that is a great evil by which the name of giant or demon is *affixed to manes:* such is the implied sense according to the *Retnácara*. "Enemies, &c.," this curse is pronounced by them.

CCCXII.

Smriti, quoted in the *Retnácara* :—A son of any description should be anxiously adopted by one who has no male issue, for the sake of the funeral cake, water, and solemn rites, and for the celebrity of his name.

2. Fathers desire sons, dreading lest they fall to a region of horror, *and reflecting*, whosoever *among these sons* shall go *as a pilgrim* to *Gayá*, will convey us *beyond those places of torture.*

It follows, that all manes are carried beyond the regions of horror, in consequence only of obsequies performed at *Gayá*.

CCCXIII.

"A son will consecrate a bull *at my funeral*, will perform obsequies at *Gayá*, will make sacrifices, and consecrate pools; he will defend me in old age, and will daily offer the *sráddha* after my decease."

In the former text a pilgrimage to *Gayá* was alone mentioned; in this text obsequies are also specified; there is not consequently any vain repetition. "Daily;" every day, that is, every new moon. This alludes to the day of the patriarchs: a month of mortals, says AMERA, is a day and a night of the patriarchs. Or it may allude to obsequies constantly *or daily* performed.

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* The first hemistich has been cited at v. 104.

CHAP. V.

ON EXCLUSION FROM PARTICIPATION.

SECT. I.—*On Exclusion from Inheritance.*

CCCXIV.

As a man would be drowned who attempted to pass deep water in a boat made of woven reeds, so does a father sink in the gloom of death, who leaves only contemptible sons.

Consequently, he who is averse from performing constant and occasional rites, does not benefit his father: hence he is not capable of inheriting the paternal estate.

CCCXV.

'APASTAMBA :—No doubt, all the sons who are virtuous take their shares; but him who illegally acquires wealth, even though he be the first born, let the king declare incapable of inheriting.

Who, though first born, illegally dissipates* wealth; such is the construction and sense: "illegally," by gaming or the like: "incapable of inheriting;" capable of inheriting no more than the residue of a share, after deducting so much as has been dissipated by him. Some thus expound the text. The *Retnácara.*

Consequently, so much shall be deducted out of his share as has been expended with no view to the support of the family, to religious duties, and the like: but if more than the amount of his own share have been expended, the law does not direct that the excess shall be considered as a debt; it is fit that he should only be deprived of his share.

A puerile author reverses the reading; but to him who acquires wealth by legal means, "an equal share with his father shall be allotted." That reading, says JÍMÚTAVÁHANA, is not traditional.

Others explain the term (*pratipádayati*), "acquires," or earns. Consequently, he who follows an illegal mode of subsistence, through avidity for wealth, without the sanction of the law, shall be deprived of his share. "Following an irregular profession," in the text of GÓTAMA, signifies subsisting by unlawful means.

CCCXVI.

GÓTAMA :—Though son of a woman equal in class, he who follows an irregular profession, does not take a share *of the inheritance*, according to some *law-givers*.

* The same term is variously explained by the several commentators. I retain Sir William Jones's version of the text. T.

CCCXVII.

MENU:—All those brothers who are addicted to any vice, lose their title to the inheritance.

"Any vice;" any forbidden acts, such as slaughter or the like, and reprehensible means of subsistence, Book II, Chap. IV, v. XX and XXVII). The virtual sense of the text (Book II, Chap. IV, v. XXVII 2), say these lawyers, is, that usury, agriculture, and commerce, are honest professions for a *Vaisya;* but, followed by a *Bráhmana* or a *Cshatriya*, partake of the quality of passion.

Of these two the preferable opinion may be determined by the *regular* sense of the word *pratipádayati.* According to the best authors, the verb *pad*, preceded by *prati*, and augmented by the suffix *nyi*, is employed in the sense of "give;" preceded by *ut*, it is used as signifying to generate or produce. By the word "though," in the text of GÓTAMA, it is intimated, "much less shall the son of a woman unequal in class *take a share, if he follow an irregular profession:*" "share" must be supplied in the text.

By the expression "even though he be the first born," the middlemost and the rest are included in the text of 'APASTAMBA: an alternative, says the author of the *Pracáśa*, is deduced from a reference to the case of one who is able to avoid illegal practices. Consequently the expression "according to some," denotes a contingency: and that contingency is thus settled: he who can avoid irregular means of subsistence, shall take a share; but if he do not avoid them, he shall not participate. GOYÍCHANDRA also affirms, that the expression "according to some," denotes a double contingency, not a difference of opinion.

CULLÚCABHATTA expounds "addicted to any vice," (CCCXVII), devoted to gaming or the like. Others explain it 'inclined to dissipate the wealth of the family.' JÍMÚTAVÁHANA interprets it 'averse from performing their father's obsequies, and other acts of religion.' According to the opinion inserted in the *Retnácara*, as maintained by some lawyers, the precept for depriving a gamester or other vicious person of his share, must be understood as signifying the allotment of a share diminished by so much as has been dissipated. According to other commentators, men addicted to gaming, or the like, are not deprived of their shares, but men who follow an illegal profession. Such is the difference between these two opinions: but it must be noticed, that many authors acknowledge the exclusion of a man addicted to gaming and similar vices.

CCCXVIII.

SANC'HA and LIC'HITA:—Of him who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct.

"Formally degraded;" expelled by his kinsmen, with the ceremony of kicking down a water-pot,* for a crime *in the third degree*, such as killing a *Cshatriya without malice*, or the like. The *Retnácara.*

JÍMÚTAVÁHANA explains "formally degraded," excluded from the joint libation of water. Both opinions coincide.

* See MENU, Chapter XI, v. 185.

CCCXIX.

VRĬHASPATI:—Though born of a woman equal in class, one who is not virtuous shall have no claim to the paternal estate; it is ordained to devolve on those learned priests who offer the funeral cake to the deceased.*

2. A son redeems his father from every debt whatsoever due to superior or inferior beings; no advantage is therefore gained through one who neglects that duty.

3. What can be done with that cow which neither affords milk, nor becomes pregnant? Of what use is that son who is neither learned nor morally good?

4. A son who has no sacred knowledge, nor courage, nor industry, nor devotion, nor liberality, and who observes not immemorial good customs, must be considered as similar to urine and ordure.

"Not virtuous" must be explained by the subsequent texts.

The *Retnácara*.

It consequently signifies one destitute of good qualities, such as *the willingness* to discharge the debts of the father and the like. "Not virtuous" is explained by RAGHUNANDANA, 'tainted with those vices which are the reverse of good qualities.' That is wrong; for the Sage, declaring useless a son devoid of good qualities, as described in the second text (CCCXIX 2), intimates, that he is incapable of inheritance. A text of NÁREDA, bearing the same import, shall be cited.

By the word "though," the son of a woman unequal in class, and the substitute for a son, are assuredly excepted *in similar circumstances*. "Who offer the funeral cake *to the deceased*;" this phrase *(tat pindadáh)* is expounded in the *Retnácara*, who give food and apparel to this man who is devoid of good qualities. The inheritance and other rights therefore devolve on learned priests: it is also mentioned, that food and apparel must be allowed to this son who is destitute of good qualities. "Learned priests" are mentioned illustratively; the term comprehends any person who duly performs the obsequies and other constant and occasional rites. RAGHUNANDANA explains the term *tat pindadáh*, 'who offer the funeral cake to the deceased.' According to the *Retnácara*, 'highest and lowest debts' should be expounded "debts due to the superior beings, *such as* deities, sages, and progenitors; and those due to an inferior being, namely, man." According to HELÁYUDHA, the same terms must be explained, debts to a creditor, which are naturally degrading. By declaring him to be useless who neglects the duty mentioned in the text, that is, who wilfully omits to redeem his father, it is intimated that he is incapable of inheritance; for the law declares him alone entitled to possess the heritage who does confer benefits. The legislator mentions this, illustrating the principle by a simile (CCCXIX 3). "Learned," there signifies acquainted with right and wrong; "morally good" means practically virtuous. Here one who is acquainted with right and wrong, is compared to a pregnant cow; one who is practically virtuous, is compared to milch cattle. "Sacred knowledge,

* Also cited at v. 264.

courage, and industry," (CCCXIX), severally relate to the three first classes; "devotion" and the rest concern all tribes. "Immemorial good customs;" the terms *may be explained* 'the practice of virtue to the utmost 'of his power.' "Must be considered as similar to urine and ordure;" as urine and feces are ejected through organs *of action*,* so was he also ejected in the form of seminal juice. It follows, therefore, that a son, even though free from vice, who neglects to fulfil prescribed duties to the utmost of his power, is excluded from participation; else it were vain to pronounce him useless. Vice *here* signifies malicious wrong to others and the like. May not the determinate sense of vice be here restricted to neglect of prescribed duties? then the opinions of RAGHUNANDANA and the *Retnácara* would accord. It should be noticed, that deficiency of good qualities, as a cause of exclusion, signifies the neglect of *fulfilling* indispensable duties at the proper time and place; the same term, as used in the chapter on Sons of twelve descriptions, signifies neglect of voluntary acts of religion, which is a ground of inferiority in rank.

CCCXX.

NÁREDA:—A professed enemy to his own father, a degraded man, one deprived of virility, and a man formally expelled *by his kinsmen*, shall not inherit, though begotten by the deceased; much less if begotten on his wife by a kinsman legally appointed:

2. One afflicted with an obstinate or an agonizing disease, and one insane, blind, or lame, from his birth, must be maintained by the family; but their sons may take the shares *of their parents*.

He who hates his father, is a professed enemy to him: enmity is manifested by attempting his life and so forth; but after the death of the father, by withholding the libations of water and the like, *which should be offered* for his sake. "A man formally expelled;" one banished with the ceremony of *kicking down* a water-pot, for a crime *in the third degree*, such as killing a *Cshatriya without malice* or the like. "Obstinate diseases" are a trophy and the rest; "agonizing distempers" are leprosy and the like. These persons must be maintained or fed by the family, that is, by their brothers and the rest. The *Retnácara*.

The author of the *Pracása*, reading *upapátabi* (sinner in the third degree), instead of *apapátrita* (formally expelled), explains it guilty of crimes in the third degree. JÍMÚTAVÁHANA and RAGHUNANDANA read *aupapática;* that likewise signifies guilty of crimes in the third degree.* In the *Calpateru*, the text is read *apapátrita*. The exclusion of one formally expelled or degraded by his kinsmen, is expressly ordained in the text of SANC'HA and LIC'HITA. A sinner in the third degree is only excluded from participation, in the case of repeated offences: crimes are therefore mentioned in the plural number. Degradation for a single offence only takes place in the case of more heinous crimes. "A professed enemy to his own father:" this accords with VRĬHASPATI; for, the exclusion of one who wilfully omits the performance of obsequies and the like is thus propounded. Though adorned with many virtues, such as liberality and the like, he is excluded from participation, if he refuse to perform obsequies and similar acts of piety. "Insane from his birth;" it is hereby intimated, that one who subsequently

* See MENU, Chapter II, v. 91.

becomes insane from the pernicious power of mineral drugs, or the like, is not excluded, any more than one who subsequently becomes blind or lame. In the *Viváda Chintámeni*, the text is read "idiot (*ja'da*), insane, blind, or lame," instead of "insane, blind, or lame, from his birth (*janma*) :" "idiot" is there explained, one who is incapable of discrimination. "But their sons shall take the shares of their parents;" consequently their sons shall participate as grandsons; or if these be also similarly circumstanced, their grandsons shall take the shares as great grandsons of the deceased : but if these be likewise similarly circumstanced, no argument is hinted to prove the right of their sons (*who are great-great-grandsons of the late proprietor*) to take the shares of their parents. However, the son of a degraded man shall not participate.

CCCXXI.

DÉVALA :—On the death of a father, *or other owner of property*, neither an impotent man, nor a person afflicted with elephantiasis, nor a madman, nor an idiot, nor one *born* blind, nor one degraded for sin, nor the issue of a degraded man, nor a hypocrite or impostor,* shall take any share of his heritage.

2. For such men, except those degraded, let food and clothes be provided; and let the sons of such as have sons take the shares of their parents, if themselves have no similar disability.

"On the death of the father;" the meaning is, even on the death of the father. "A hypocrite;" one who rigidly practises austerities with an intent to deceive. The *Retnácara*.

Of course, sons have no right to the property of their father; it would therefore be superfluous to say, "on his death:" hence the word "even" is supplied.

A person afflicted with elephantiasis, and who has not made expiation, *is excluded from* inheritance; but one who has made atonement shall take a share, since the sinful taint is removed; for that was the sole cause of his exclusion. This is accurate; and in like manner, a person afflicted with marasmus is only excluded if he have not made expiation. It should not be argued, that the disability of men tainted with sin is shown by the mention of persons degraded for their crimes: by the further mention of a "person afflicted with elephantiasis," it is intimated, that the disease is, in its own nature, a cause of exclusion from inheritance. RAGHUNANDANA holds, that expiation for a man afflicted with elephantiasis, or other similar disease, is ordained for the purpose of enabling him to perform acts of religion ordained in the *Véda;* by parity of reasoning, he becomes competent to inherit property, as well as to perform religious ceremonies: it is not found, in any other case, that a son competent to perform obsequies and other acts of religion is not qualified to inherit. The leper is separately mentioned to deny his right of inheritance; which might be supposed, because he is not a degraded person.

Although the sinful taint be diminished, is not a leper degraded because the *original* crime was heinous? It should not be objected, that the

* The term is explained by some commentators "a fraudulent wearer of sacred marks."

body in which the offence was committed is alone tainted with sin, and the occupant of that body is alone degraded; but the crime having been perpetrated in another body, the occupant of the present one is not degraded There is no argument by which this induction can be supported. To the question proposed, the answer is, degradation signifies that state which occasions both disability for acts of religion ordained in the *Véda*, and a *final* doom to misery in another world; but leprosy does not occasion evil destiny in another world, nor does it cause disability for acts of religion: in fact, a man so tainted with sin ought not to undertake a religious rite, although elephantiasis and the like have not ensued.

Is not a known crime the sole cause of disqualification for acts of religion? and hence they may be duly performed by one who is not conscious of a crime which he has fortuitously committed in his present existence. Again; if leprosy be a cause of disqualification for religious ceremonies, why should it not occasion disability for inheritance? As for the assertion, that, since the injunction of penance would otherwise be fruitless, he becomes equally capable of possessing property, and of performing acts of religion, (for there are no grounds of preference,) that is not accurate; for nothing opposes the assertion, that penance is undertaken lest leprosy or the like ensue in a future birth.

The modern VÁCHESPATI BHATTÁCHÁRYA holds, that a crime in the first degree is inexpiable so far only as relates to the body in which the crime was committed; accordingly the observation of RAGHUNANDANA is accurate, that, since the cremation of a husband guilty, in his present state, of slaying a priest, is forbidden, one guilty of that crime, in a preceding state, is alone redeemed by his wife dying with him. If expiation were refused to all bodies occupied by one guilty of a crime in the first degree, then cremation would be denied to a man tainted with sin, even though it were committed in a former birth; the observation of RAGHUNANDANA would be therefore inaccurate; and a husband guilty of slaying a priest, *in a preceding state*, could not be purified by his wife dying with him. It should not be argued, that cremation is only permitted when the degradation is unascertained, the crime committed in a preceding state being unknown; but cremation is refused when that is ascertained from elephantiasis, or other token of sin. As in the case of defilement, so in the present instance there is no argument for requiring *the previous* ascertainment *of the fact*: it is not true, that, if a man employ, in the celebration of a sacrifice, one who has committed a crime in the first degree which is unknown, a sinful taint is not thereby contracted; for, when many persons take a repast in company, it is directed by Sages that a line of separation be drawn with water, sand, or the like, through fear of associating with a degraded man. Nor should it be argued, that this is not RAGHUNANDANA's opinion; but his meaning is, that cremation is refused to one who is a known sinner; and no sinful taint is contracted, if a sacrifice be performed by the intervention of one guilty of slaying a priest, but whose crime is unknown: the practice of drawing a line of separation is founded on the apprehension of associating with one who conceals a crime of which he is guilty. Were it so, the expression "in a preceding state," would be unmeaning. As for the exposition, which might be proposed, "a crime committed in a preceding state, which is concealed, is a sin of a preceding state, and one known in this life is a sin of the present state" that is inadmissible; for it would be wrong to attribute to an author an implied meaning so ill justified. In like manner, adds VÁCHESPATI BHATTÁCHÁRYA, if the corpse of one who has committed a crime which is unknown

be burnt, those who burn the corpse must be acknowledged to be guilty of an offence, as they are if they burn the corpse of one who has concealed his sin.

This again does not hold good: a thing cannot be justified on the sole consideration of any author's assertion, without *support from* reasoning, *or from* the *express* text of a legislator; for the simple assertion of a commentator may be anyhow applied. For instance: a priest is a human being endued with strength; he is not slain by the simple imposition of hand or foot, without blow or wound; and that must be known: hence, *to suppose an unknown offence*, it is necessary to revert to a former birth. It should not be objected, that no argument proves cremation to be forbidden then only when the sin is known; and consequently expiation is denied to that body alone, by the occupant of which the crime was committed. To secure the effect of dying with a husband, namely, atonement for the crime of one guilty of slaying a priest, as it is neccssary (this being an occasional rite) that the occasion of it be ascertained; so likewise in a prohibited case, the cause, being ascertained, ought to be considered as a sufficient ground *for invalidating the act*. This really occurs in the case of one who takes a repast on the eleventh day of the moon, not being aware of the date. It should not be argued, that no sin is committed *by such unintentional breach of an enjoined fast*. As merit is not *gained* by one who abstains from food on the night of ŚIVA,* without being aware *of that rigorous fast;* so a forbidden act, being done, produces the sin consequent on such act, although the cause *why it should have been omitted* were unknown. It is indeed declared, as an inference drawn from the texts of MENU and YÁJNYAWALCYA, that, although a crime be unatoned, an act done ignorantly is valid: hence the cremation of one whose crime was unknown is valid; but those who burn his corpse contract a sinful taint.

MENU:—The gods declared three pure thing peculiars to *Bráhmanas;* what has been defiled without their knowledge; what in cases of doubt they sprinkle with water; and what they commend with their speech.

YÁJNYAWALCYA:—What is not known *to have been defiled* is ever pure.

If it be said, leprosy must also be affirmed to be a cause of disability for performing acts of religion ordained in the *Véda;* to disqualify one who does not know, through his acquaintance with the law, that this leprosy proceeds from a crime formerly committed; and, for the purpose of disqualifying one who is ignorant of the law, it is not necessary that some person should tell him, "it is inferred from this leprosy that a crime was committed by thee in a former state;" then the answer is, admitting that leprosy is also a cause of disability, what difficulty follows? what prevents a sin ascertained by leprosy, or the like, becoming the cause of disability for performing acts of religion ordained in the *Véda?* VÁCHESPATI BHATTÁCHÁRYA, who contends that atonement is denied to that body in which a crime in the highest degree was committed, only admits that a body infected with sanious leprosy, which is a token of a heinous crime, cannot obtain atonement. *But* if the sinful taint be removed, that consequence is obviated. The following text declares sanious leprosy to be the worst sort:

* On the 14th lunar day of *Phálguna*.

CCCXXII.

Bhawishya purána:—Hear, O priest! the enumeration *of various sorts* of leprosy, the last worse than the first: blisters on the feet, a deformity in the generative organs,* cutaneous fissures, true elephantiasis, ulcers, coppery blotches, black and (eighthly) white leprosy.

3. Among these, that leper is most vile, in respect of all religious acts, who is afflicted with ulcers on all his limbs, *especially* on his temples, forehead, and nose.

4. When he dies, let his corpse be cast near a sacred river, or other holy place, or at the root of a sacred tree; let not a funeral cake or libation of water be offered, nor his corpse be burnt, nor obsequies be celebrated.

5. Should a man through affection burn the corpse of a leper, who has been six or even three months infected with the disease, that man must perform the lunar penance of an anchoret.†

Among those lepers of eight sorts, he who is incapacitated for all solemn rites is described (this word must be supplied) as afflicted with ulcers in all his limbs, or on his temples, forehead, or nose. Since this is merely illustrative, he who is infected with that foul leprosy which is attended with ulcers on any other part of the body, is abominated, *and disqualified* for all solemn rites. Or the term "on all his limbs," being employed by the same rule by which two names for kine are used at once in a general and particular sense, the meaning is, "on any part of the body, whether the temples and the rest, or parts different therefrom." Or else the meaning may be, 'afflicted with ulcers on any one or more of all the 'parts of the body, or especially with those other ulcers called coppery, 'black, or white sores, on any one of the parts specified, namely, the temples 'and the rest: he who is afflicted with any one of these diseases *is most* '*abominated.*' "A leper who has been six or even three months infected with the disease, &c.," according to the first opinion, if lepers die who had been six months afflicted with *one of* the other seven sorts, or three months infected with sanious leprosy, their bodies shall not be burnt; and, *if they live*, they become incapable of inheritance. Or the meaning is, 'after three 'months, if the sanious leprosy spread over all the limbs; after six months, 'if it only invade the temples or the like.' Or the sense may be, 'after six 'months, if the sanious leprosy invade any part of the body in general; 'after three months, if it consist in a coppery sore or the like, which especi- 'ally attacks the temples and other parts mentioned *in the text*.'

It is said, that, the sinful taint being removed after penance performed, the degradation of the leper would be set aside: neither RAGHUNANDANA nor SÚLAPÁNI have inferred, from the separate mention of the leper, that his corpse shall not be burnt, although he had performed penance. The unfitness for cremation after death being *thus* removed, he therefore becomes

* See MENU, Chapter XI, v. 49. *Duscherman*, the term which occurs in the text, is explained as signifying the natural want of the foreskin.

† MENU, Chapter XI, v. 219.

competent to perform acts of religion *during his life;* and this being proved, his right of inheritance is likewise established by parity of reasoning; and the leper is again expressly mentioned by the same rule by which two names for kine are at once employed in a general and particular sense: since his degradation can only be inferred *by logical reasoning,* men of weak understanding would not readily apprehend it; the *leper is therefore separately mentioned,* to assist ready apprehension. The same must therefore be understood in respect of obstinate agonizing diseases (CCCXX). The opinion of RAGHUNANADANA and the rest cannot be impugned on the sole ground of the leper being separately named. As for what is affirmed, that although the sinful taint proceed from the murder of a priest, or other heinous crime, it is diminished by long endurance, and is therefore no cause of degradation; and hence the leper is separately mentioned, because he cannot be included in the term "degraded man:" (to which it should not be objected, that although the sinful taint be diminished by long sufferance, the nature of the taint remains *unaltered;* and RAGHUNANDANA is accurate in admitting, that bodies of men who had black teeth, or other corporeal marks of sin, must not be burnt; were it so, it would be necessary to perform the penance of twelve years:*) that is wrong; for legislators have propounded penances *equivalent* to the sufferance of such pains as would be produced by that sinful taint; and in the interval, when much has been already suffered, a penance equivalent to such part as remains to be endured. "Degarded man" must be explained 'one who has done a criminal act;' else, since the issue of an outcast may be sufficiently described by the simple term "degraded," the expression "issue of a degraded man" would be superfluous. But this man (the leper) is not one who has done a criminal act; for it was not done by *him in* his present body... If it be argued that disability must be affirmed of him who is tainted with the sin consequent on that act, lest the offender become capable of possessing *inherited* property when two days have elapsed after the murder of the priest, or other crime committed, since the act itself is not of long duration, then the son of the leper would be also disqualified. Therefore the occupant of the body, by which a criminal act was committed, is alone disqualified by reason of the sinful taint arising from an act of the body; and the leper is separately mentioned to suggest disability so long as the sinful taint remains, although he occupy a different body. Then a man who has black teeth or the like would be capable of inheritance, and so forth, even though penance have not been performed; and if this be deemed admissible, one who is afflicted with slight elephantiasis being disqualified, *though he be* not a greater sinner than one who has black teeth, would not this be an unjust disparity? By the word leper must be understood one infected with the sanious kind; a man afflicted with slight leprosy, and one who has black teeth and the like, retain their right of inheritance, and so forth: accordingly the man who is infected with a particular sort of leprosy, being alone described in the *Bhawishya purána* as an abominated person (CCCXXII 3), the denial of cremation must be understood of him alone. It should not be objected, that a man infected with grievous leprosy is disqualified under the authority of the text, although he have performed penance, since no argument exists by which it can be proved that the term "a person afflicted with elephantiasis" (CCCXXI) bears the secondary sense of "tainted with sin." If one who laboured under the full taint of sin regain his rights when he has performed penance, and one who

* MENU, Chapter XI, v. 73.

labours under the remains of such sinful taint be disqualified, although he have performed penance, the disparity would be unjust. Not the disease, but the sin alone is the cause of disability. This is stated on the authority of the opinion delivered by VÁCHESPATI BHATTÁCHÁRYA.

According to RAGHUNANDANA, they who have black teeth and the like, as well as he who is afflicted with slight elephantiasis, (should penance be unperformed,) can neither be burnt *after their decease,* nor succeed to property *during their lives;* for these also are sinners in the first degree, and the text expresses.

CCCXXIII.

Brahme purána:—They who have committed crimes in the first degree, are considered as degraded persons.

Would not the son of a leper, born before the disease broke out, be disqualified as the issue of a degraded man? Say not, that is admissible; for it would be inconsistent with approved usage. Nor should it be affirmed, that in this place "degraded man" signifies one tainted with a sin in the first degree; but in the expression "issue of a degraded man," it signifies the occupant of that body whence the sinful act proceeded. There is no argument on which various senses can be established for the word "degraded" twice used in the same sentence (CCCXXI). If this be proposed, the answer is, No; for, in both instances, the term degraded relates to the occupant of that body whence the sinful act proceeded. For this reason only is the leper separately mentioned; and thus, after premising degradation (CCCXXIII), the cremation of outcasts being forbidden in the *Brahme purána* (CCCXXIV), the cremation of lepers is consistently forbidden in the *Bhawishya purána* (CCCXXII), as they are outcasts. Degradation there signifies the state of one guilty of a crime in the first degree, and so forth. Consequently, cremation and the like being allowed to one who has performed penance, since he is no longer an outcast, the performance of prescribed acts of religion, such as obsequies and the like, is also deduced; and that being proved, his right of inheritance is also established.

CCCXXIV.

Brahme purána:—Of degraded persons there shall be no cremation, nor funeral sacrifice, nor gathering of their bones.

By parity of reasoning, should not one who has black teeth or the like, and by whom penance has not been performed, be incapable of inheritance? but that is not declared by the text; his exclusion from inheritance is intimated by NÁREDA (CCCXX 2). SÁTÁTAPA has used the word "malady," which is synonymous with disease, as also signifying black teeth and other morbid changes.

CCCXXV.

SÁTÁTAPA:—The morbid mark proceeding from a heinous crime is reproduced in seven *successive* births: *the right of inheritance* is obstructed by malady; but that is removed by the first or common penance and the like.*

* *Crich'hra:* MENU, Chapter XI, v. 209 and 212, (see also 125.) The term very frequently occurs in that Chapter, and is translated severe; but, taken as the name of a particular form of penance, it seems to be the same with that of PRAJÁPATI.

2. And so is leprosy, marasmus, gonorrhœa, and dysentery.

Any mark proceeding from a heinous crime is thus described as malady or disease. VISHNU also mentions black teeth as the mark of a sin in the first degree.

CCCXXVI.

VISHNU:—They who have suffered the pains experienced in hell, and have passed through the reptile state, bear the marks *of their yet unexpiated crimes* in the human form; an atrocious sinner becomes leprous; the slayer of a priest is afflicted with marasmas; a drinker of spirits has black teeth; a stealer of gold has whitlows on his nails; the violator of his preceptor's *(guru)* bed has a deformity in the generative organs.

In the text of DÉVALA the word "elephantiasis" is illustrative of these *morbid changes;* for, in texts which will be quoted, it is expressed by the general term 'disease' or 'malady.' Then a man afflicted by gonorrhœa, or dysentery, would be also disqualified. Gonorrhœa, dysentery, and the rest, may also proceed from the pernicious effects of drugs; but if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree, disability is admitted by the terms of the text of NÁREDA (CCCXX 2.) It is the same in the case of one who becomes insane in the course of his life. It should not be objected, that the special mention of him who is afflicted with ulcers (CCCXXII 3) would be superfluous. The distinction is this, men afflicted with very slight elephantiasis and the like are competent to perform the constant rites; but one infected with grievous leprosy is not capable of performing them.

To reconcile the discordant opinions of many wise persons concerning the competence of a leper *to inherit and to perform acts of religion*, various modes have been exhibited. But, according to both opinions, a man infected with grievous leprosy is in effect capable of inheriting when he has performed penance: according to RAGHUNANDANA and others, men afflicted with elephantiasis, marasmus, honey-coloured gonorrhœa, black teeth and other distempers difficultly cured, are incapable of inheritance so long as penance be unperformed: according to VÁCHESPATI BHATTÁCHÁRYA, they are capable of inheritance. BHAVADÉVA holds, that a leper who has not performed penance *is excluded from succession.* This brief exposition may suffice.

"A madman," in the text of DÉVALA (CCCXXI), signifies one insane from his birth; for the import is the same with that of the text of NÁREDA (CCCXX 2). RAGHUNANDANA explains "idiot," one who cannot support the performance of duties: others explain the term, void of understanding. "Blind," signifies born blind; for it coincides with the text of NÁREDA. One degraded for sin is he who has slain priests, or committed some other atrocious crime, and who has not performed penance, *but, on the contrary,* is averse from it; for RAGHUNANDANA says, aversion from penance on the part of the fallen sinner contributes to the forfeiture of his right to his own property. His not being averse from penance contributes to his right in the paternal estate. But VÁCHESPATI BHATTÁCHÁRYA affirms, that 'aversion 'from penance is no cause of forfeiting his right in his own estate; penance,

'or other atonement, which legalizes his *claim to* property, can only be performed with money begged, during his fallen state, from his son, or from 'some other person. It is not proper to affirm, that his property in wealth 'acquired during his fallen state is forfeited by reason of his degradation. A 'degraded sinner would be always compelled to rob for his subsistence. 'However, should the son or other person take the heritage, and yet refuse 'to give money for the penance *to be performed*, he ought to be compelled to 'give it.' According to his opinion, the matter is not in this case regulated by aversion from penance.

"The issue of a degraded man;" issue born after the commission of the act, which is punished by degradation; for this agrees with the text of VISHNU (CCCXXVII). A hypocrite *or impostor* is explained, in the *Retnácara*, one who rigidly practices austerities with a fallacious intent.

CCCXXVII.

VISHNU, after premising the fallen sinner, the eunuch, and the rest:—The legitimate sons of these *are sharers of the patrimony;* but not the sons of a degraded man, born after the commission of the act which is punished with degradation, nor those who are procreated in the inverse order of the classes: their sons do not participate even in the property left by the paternal grandfather.

"Of these" persons above mentioned, the legitimate sons (that is merely illustrative, for the eunuch can have no son of his body,) are sharers: the sense must be so completed. The legislator excepts the offspring of an outcast, "but not the sons of a degraded man, &c." "Nor those who are procreated in the inverse order of the classes," by a man of the military or other lower class, on a wife of the sacerdotal or other higher class; or by a *Bráhmana* on a *Cshatriya* wife, espoused subsequently to his marriage with a *Vaiśya* one, and so forth.

The legislator also declares their offspring unentitled to participation: "their sons, &c." "Property left by the paternal grandfather:" this is merely illustrative, say some lawyers, and it includes wealth left by the great-grandfather. But others affirm, that their grandsons have a claim to the estate of the paternal great-grandfather, because the text *only* expresses "property left by the paternal grandfather." It should be considered, that no argument exists on which the secondary sense can be assumed.

CCCXXVIII.

BAUDHÁYANA:—Persons incapable of transacting business, blind men, idiots, those who are immersed in vice, or afflicted by *incurable* diseases, and *even* those who neglect their duties, (but not the degraded nor their issue,) let the heirs supply with food and apparel.

"Persons incapable of transacting business;" not become capable of civil transactions. The *Retnácara.*

The terms may be also explained, neglecting civil affairs, and solely devoted to acts relative to another world. "With food and apparel;" according to the *Retnácara, this shall be supplied* out of their own allotments committed to kinsmen in trust *for their use*. "Blind men;" persons born blind. "Those who are immersed in vice;" the term (*vyasana*) is explained

by AMERA, danger or calamity, falling low or erring, vice proceeding from lust or wrath : consequently the heir must support those who have fallen off from their duty, that is, who are addicted to gaming and the like.; and such as are impelled by vice proceeding from lust, that is, addicted to the frequentation of courtesans; and those who are impelled by vice proceeding from wrath, or who always design mischief to others: it follows from the maintenance ordained, that they shall be excluded from participation.

The *Brahme purána* expressing *that* irreligious impostors, and those whose minds are perverted, *shall not be burnt ;* and RAGHUNANDANA expounding the last term as signifying those who maliciously injure others; it is established, that to such as are malignantly mischievous, cremation shall be refused; it is therefore reasonable that they should be excluded from inheritance. "Afflicted by *incurable* diseases;" by elephantiasis or the like. "Those who neglect their duties;" *or* who are disqualified for acts of religion, such as sacrifice or the like. Thus *a similar term is used in the following verse:—*

Wealth is conferred for the sake of defraying sacrifices; therefore distribute it among honest persons for that purpose, but not among women, ignorant men, or such as neglect their duties.*

"Ignorant;" unacquainted with the *gáyatri;* not knowing the sense of that prayer. RUDRADHARA.

"One who neglects his duties;" one who performs not the ceremonies enjoined at morning and evening twilight, and at noon, nor other daily acts of religion: a woman is disqualified for sacrificing, because she is incapable of sacred knowledge. The legislator declares an ignorant man, and one who neglects his duties, incompetent to sacrifice.

Him who neglects solemn rites, the ignorant man, one who is afflicted by a groivous malady, and one who acts according to his mere pleasure, the wife have declared impure even until death.

Consequently, by declaring them impure until their death, it is intimated that they are unfit for celebrating a sacrifice, for which purity is required.

But JÍMÚTAVÁHANA reads *acarmacarminah* "those who practise what "is inconsistent with duty," instead of *acarminah*, "those who neglect their duties:" according to his opinion, persons addicted to gaming and the like are intended by that term. "But not the degraded, nor their issue;" thus, excluding outcasts and their offspring from supplies even of food and apparel, it surely follows that they are deprived of their shares.

CCCXXIX.

MENU:—Eunuchs and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage;

2. But it is just that the heir who knows his duty should give all of them food and raiment *for life* without stint, according to the best of his power: he who gives them nothing, sinks assuredly *to a region of punishment.*

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* See Chapter VIII, (v. CCCCXIII.)

3. If the eunuch and the rest should at any time desire to marry, *and if the wife of the eunuch should raise up a son to him by a man legally appointed, that son, and* the issue of such as have children, shall be capable of inheriting.

"Persons born blind:" by the mention of birth the legislator suggests the incurableness, not the origin of the blindness. "Idiot;" devoid of knowledge of himself and others. By the mention of "such as have lost the use of a limb," persons lame or the like, who are disqualified for acts of religion ordained by revealed and memorial law, are suggested. To all these, namely, to eunuchs and the rest, food and raiment must be given without stint as long as they live. "If the eunuch and the rest should at "any time desire to marry:" this apposition is in the form called *bahubríhi*, not however connecting the attribute or proposition with each member of the compound term; for the eunuch is incapable of procreating offspring. But the author of the *Pracása* considers "impotence" as determinately signifying incapacity of propagation, arising from a defect which may hereafter be removed: he does not therefore acknowledge the apposition to be that form of *bahubríhi*, which connects not the attribute with each member of the compound term. Thus far the *Retnácara*. The meaning is, as persons afflicted by a hopeless malady must be supplied with food and raiment, so must he who is afflicted by incurable blindness, and so forth. That is not the opinion of CULLÚCABHATTA; for he expounds the text, 'eunuchs, fallen sinners, persons born blind, or devoid of the sense of hearing, 'madmen, those who support not the performance of duty, and such as are 'deprived of speech.' JÍMÚTAVÁHANA says the word "born" is connected both with "blind" and with "deaf." In expounding the text of DÉVALA above cited (CCCXXI), he says "blind" signifies born blind; for this coincides with the expression "born blind or deaf" *in the text of* MENU. In practice, the succession of one who becomes deaf in the course of his life occurs, even though the deafness be incurable: the same is also proper in a case of blindness. Consequently the term must be understood as signifying one born blind, or born deaf. It is expressly declared by NÁREDA (CCCXX). "Idiots:" through want of knowledge, not through absorbed contemplation of the divinity *(in which state a man is wholly insensible to every occurrence, and might therefore come within the definition of idiot)*. "Such as have lost the use of a limb;" not such as have lost any organ generally, (for that would include a vain repetition of the terms blind and deaf); but such as have lost the use of some one limb; for example, wanting the use of a hand, or of a foot. The repetition of "blind" and the rest may be supposed by the same rule by which two names of kine are at once employed in a general and particular sense. "Wanting the use of a foot" in effect signifies lame.

The construction of the second text (CCCXXIX 2) is this: it is just to give all of them, namely eunuchs and the rest, food and raiment for life. From the conclusion of the second verse (CCCXXIX 2) it must be inferred, that he who does not willingly give *food and raiment*, shall be compelled to give it. The use of supposing an apposition in that form of *bahubríhi* which connects not the attribute with each member of the compound term, is, that the word to which the term "and the rest" is subjoined, may not be included in the apposition: hence the meaning would be, 'if the rest, excluding the eunuch, should desire to marry.' But that is questionable; for MENU declares that an eunuch may adopt a son begotten on his wife

duly authorized (CCXXXI*), and BAUDHÁYANA has delivered a similar text (CCXXXVII). According to the author of the *Pracáśa*, this law (CCCXXIX 3) regards one who becomes impotent in the course of his life. That is questionable; for, as one who becomes blind in the course of his life ought to share the heritage, so ought one who becomes impotent. As it is recorded in the *Bharáta*, that SIC'HAN'DINÍ, daughter of DRUPADA, did espouse a wife,† so it may likewise happen that an eunuch, mistaken for a man, may contract a marriage. Impotence is of two kinds: the impotence of one who is deprived of the generative organ, and the incapacity of doing the virile act, although the generative organ exist. The last is described by CÁTYÁYANA.

CCCXXX.

CÁTYÁYANA:—He is called impotent whose urine froths not, whose feces sink in water, and whose generative organ is deficient in erection or in seminal juices.

Although the eunuch and the rest should not marry, they may adopt children, such as sons given and the rest; and therefore the phrase "if they should desire to marry" is exceptionable. If the degraded sinner have a wife married before he became an outcast, the son of his wife, or other male child adopted during his degradation, and the son of his body procreated before it, may claim shares of the heritage; as appears from texts of DÉVALA and others above cited.

CCCXXXI.

YÁJNYAWALCYA:—An outcast and his son, an eunuch, one lame, a madman, an idiot, one born blind, and he who is afflicted by an incurable disease, must be maintained without any allotment of shares.

"His son," procreated after his degradation. "An idiot;" one whose intellectual faculties are imbecile. "An incurable disease;" a hopeless leprosy and the like. By this term "and the like," other persons, described by other Sages as excluded from participation but entitled to maintenance, should be comprehended in this law. The *Retnácara*.

He who cannot walk on either foot, says JÍMÚTAVÁHANA, is lame. According to his opinion, if one foot can be used in walking, there is no true lameness. He who cannot walk on both his feet, say modern lawyers, is lame. According to their opinion, if both feet can be used in walking, then *only* is there no lameness: consequently a man is called lame, even though he can move on one foot. The opinion of JÍMÚTAVÁHANA is alone correct; for, in the text of MENU, the general failure of organs is not signified by the expression "such as have lost the use of a limb," (literally such as have not *their* organs:) were that the meaning, one who had only

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* The compiler has cited the commencement of another text in MENU's name. I have made the reference to a similar text of MENU. T.

† DRUPADA, during his wife's pregnancy, vowed he would kill the child should it prove female: his wife, to save her infant, imposed SIC'HAN'DINI' on her husband for a son. A fable is told of her exchanging sexes with a *Yacsha*, or benevolent genius. T.

lost the use of his hands would be capable of inheriting. Logicians do not acknowledge any essential property common to all organs and peculiar to them: hence a general failure of them *all* cannot be affirmed by a single term; but the general failure of a particular one *may be so affirmed*. That may be the total failure of *power to use* the hands or feet; the total failure of the sense of smelling or tasting; the deprivation of sight, *which constitutes* blindness; deprivation of hearing, *which constitutes* deafness; the total failure of the generative organs, *which is called* impotency; dumbness, or the total failure of speech, which depends upon the tongue: if the organ of excretion were totally deficient, life would cease through the suppression of dejections. An organ is a certain thing affixed to its proper place, namely, to a lump of flesh (or part of the body). Accordingly the virile act cannot be performed if a certain thing so denominated be wanting in the virile member; and so in respect of others. Consequently, if the man have the use of one hand, or of one foot, there is no general failure of those organs respectively. Again; since the purport is the same with that of the text of MENU, the same must be likewise understood in this instance from the term "lame." In practice, he alone is deemed so who cannot move even one foot.

"Blind" signifies born blind. So the *Dípacalicá*. It should here be remarked, that the term "lame," being contiguous to the word blind, must signify born lame. In like manner, "persons deprived of the use of their hands" must signify such as are destitute of the use of both hands from the day of their birth. By "the virile member" is not meant the organ of discharging urine, but *that member considered as* the instrument of procreation; as is expressed in the *Srí Bhágavata*, "the parts of generation are "distinguished by the sense of pleasure in *the act of* propagation."

CCCXXXII.

YÁJNYAWALCYA:—But their sons, whether begotten in lawful wedlock, or procreated by a kinsman on the wife duly authorized, may take shares, provided they have no disability.

On this text commentators remark, that two sons of lepers and the rest, namely, one legally begotten, and one produced by a wife duly authorized, but not their other sons, are capable of inheriting. That is not satisfactory: for the issue of an appointed daughter, the son given, and the rest, are faultless; and the offspring of the wife, and the son legally begotten, are not specially mentioned in the texts of MENU and the rest. It should not be argued, that no ground of preference exists whether the text of MENU shall be restricted as bearing the same import with the text of YÁJNYAWALCYA, or this be considered as exhibiting instances which elucidate the meaning of the other.

CCCXXXIII.

VRĬHASPATI:—MENU holds the first rank among legislators, because he has expressed in his code the *whole* sense of the *Véda;* no code is approved which contradicts the sense of *any law promulgated by* MENU.

Still, as the general term "issue," which occurs in the expression "the issue of such as have children shall be capable of inheriting," and which might be construed as declaring their daughters to be also competent

to inherit, is explained male offspring, from the coincidence with texts of other legislators; so may not the same term be explained (from the concurrent import of the text of YÁJNYAWALCYA), as signifying male issue, either begotten in lawful wedlock, or procreated by a kinsman on a wife duly authorized? No coincidence with texts of other Sages, but with another law promulgated by the same legislator, is the ground on which "issue" in the text of MENU is explained male offspring: for, when partition of the father's estate is made by his children, it appears from the text, "Either let them ("brothers" had been premised) thus live together, &c." (XVIII), that the division shall be made by his male children; surely the same appears when the estate of the paternal grandfather is divided. "sons procreated by a kinsman on a wife duly authorized," being mentioned in the plural number, must be understood to signify "and the rest;" for it is recorded, that, when the enumeration ends with a term in the plural number, it suggests others of the same *set*. "Provided they have no disability;" that is, provided they are free from defects which cause exclusion from inheritance, such as blindness, deafness, and the like. "They may take shares;" not a mere maintenance.

CCCXXXIV.

YÁJNYAWALCYA:—Their daughters must be supported so long as they be not disposed of in marriage:

2. And their childless wives, who preserve chastity, must be supplied with food and apparel; but disloyal and traitorous wives shall be banished from the habitation.

Since it is directed that daughters must be supported so long as they be not disposed of in marriage, it appears that the nuptials shall be defrayed, and that if no share be received by a son; but if the son do take a share, his sister must be supported, and her nuptials defrayed by him alone, *as is done in common cases* by a son whose father is dead. He alone must likewise support his own father, *who is disqualified*. Even an eunuch may have a daughter begotten on his wife by a kinsman; but no text of law is found to prove that he may have one received in donation or the like.

The legislator mentions "chidless wives," alluding to the married wives of eunuchs and the rest. So the *Retnácara*. It is there supposed that the female slaves* and the rest need not be maintained: "their," or of them, is considered as the sixth case denoting connexion by marriage. But, in fact, when the wife and daughters of the eunuch are supplied by his brothers with food and apparel, his male and female slaves ought likewise to be maintained by them. Twice-married women, and other adulterous wives, however they became so, shall not be supported. "Traitorous wives:" this term, according to the *Retnácara*, positively denotes treason, such as the attempt to administer poison or the like; not merely a contentious spirit. Consequently the same married wife, who ought to be banished from the habitation by her husband, shall in like manner be expelled by his brothers and the rest.

* The translation does not preserve the ambiguity of the text. The word which is here translated wife, has the same import with the French *femme*; and might signify any woman appertaining to the eunuch, even a female slave or servant. T.

CCCXXXV.

GÓTAMA:—An idiot and an eunuch must be supplied with food and raiment, but the offspring of an idiot may claim a share: like issue by a 'Súdra, sons begotten in the inverse order of the classes *shall receive a provision for their support.*

From the term "claim" it must be understood as made evident, that, if he is the heir, on the death of the paternal grandfather, then only shall he take a share; this son of an idiot shall not participate while his paternal grandfather lives. "Like issue by a 'Súdra;" that is, like a son by a 'Súdra not legally espoused: consequently a mere subsistence shall be allotted to him; but if there be no other heir, he shall receive a share: hence, like issue by a 'Súdra, sons born of women married in the inverse order of the classes, shall, if strictly obedient, have a provision for their support; *that is, a maintenance* similar to that which must be given to the son by a 'Súdra. The *Retnácara.*

But the son by a *Súdra* may take a single share by the texts of MENU (CXXXIX 4) and YÁJNYAWALCYA (CXLII): were the same admitted in the case of the son produced by a woman married in the inverse order of the classes, it would contradict the rule of VISHNU.

CCCXXXVI.

VISHNU:—Sons begotten on a woman *married* in the inverse order of the classes, are no sharers of the heritage.

CCCXXXVII.

CÁTYÁYANA:—The son of a woman not taken in marriage according to the order of the classes, or of one related by blood (*sagótra*) to her husband, and a man who has assumed the order of a religious anchoret, are never capable of inheritance.

2. However, the son of a woman not taken in marriage according to the order of the classes may be heir, provided he belong to the same tribe with his father; and so may he who is born of a woman unequal in rank, but taken in marriage according to the order of the classes.

3. The son of a woman who bears children to a husband married in the inverse order of the classes, shall not participate in the heritage; but food and apparel must be given him without stint by his kinsmen.

4. On failure of collateral heirs, he may receive the paternal estate; and kinsmen shall not *in other cases* be compelled to give him *food and raiment* out of any property not inherited from his father.

"The son of a woman not taken in marriage according to the order of the classes;" that is, a son begotten by a priest on a young woman of the military or other tribe, married in breach of that order which is prescribed by the law when damsels of various classes are espoused *by one man;* that son is not capable of inheriting.

The son of a *Bráhmana* by a *Bráhmaní*, or of any other man, by a woman of his own tribe, not married according to the order of the classes, inherits his estate; as is declared by the text (CCCXXXVII 2). The son of a *Bráhmana*, or other man *of superior class*, by a *Cshatriya*, or other woman of *inferior tribe*, taken in marriage according to the order of the classes, is capable of inheriting, though, strictly speaking, unequal in rank; as is declared in the same text. The son of a woman superior in class, but married to a man of a lower tribe, is not capable of inheritance; as declared in the subsequent verse. "But food and apparel must be given him:" if there be kinsmen, they must give food and apparel; but if there be none, he himself may take the paternal estate: if the wealth left by his father be not received by kinsmen, (the negative *a* in this phrase, "*apitryam tad d'hanam práptam*," is referred to the word *práptam* received; for *a*, *má*, *nó*, and *ná*, are terms of negation): then food and apparel need not be given. In the text, "the same tribe" is referred to the term "with the father;" in the sequel of the same verse, the construction is, "he who is born of a woman unequal in rank, but taken in marriage according to the order of the classes, may be heir."

Again; a son who is born of a woman descended from the same primitive stock with her husband, is not capable of inheritance: neither is a man who has assumed the order of a religious anchoret, even though he quit it to resume the order of a housekeeper. Such is the mode of interpretation approved in the *Retnácara*. Even though he remain in the order of a religious anchoret, he does not receive the heritage in right of its having belonged to his father. That VAŚISHT'HA declares:

CCCXXXVIII.

VAŚISHT'HA:—Those who have assumed another order, are excluded from participation.

Another order than that of a housekeeper or *married man*.

The *Retnácara*.

"The son of a woman related by blood to her husband (as claiming descent from the same primitive stock), *is not capable of inheritance*;" by parity of reasoning, the son born of any mother, who ought not to have been espoused, *is disherited*. That is a mere instance of a general meaning; the sons of a young woman sprung from the same derivative stock* with her husband, or related to him within the seventh degree *on the father's side*, or within the fifth degree *on the mother's side*, are excluded from participation.

Then, would it not follow, that a son begotten by her husband, after the solemnity of marriage, on a young woman whose seasons had commenced before marriage, should be excluded from inheritance (*for such a woman ought not to be espoused?*) It should not be answered, that, in respect of women sprung from the same derivative stock and the like, an exception, (by which term is meant negation relative to that with exclusion of which the rule of action has been settled;) is deduced by parity of reasoning from the text of MENU (Book IV, v. CLXXXV 2), and from others of the same import, such as this, "let not a man espouse a wife sprung from the

* *Pravara*; the sub-division of *gótra*. Having translated *gótra*, primitive stock, I interpret *pravara*, derivative stock. In the eighth chapter I translate *sagótra*, descendant from the same ancient sage, and *samána pravara* sprung from the same branch of a venerable stock; adopting those terms from a note of Sir WILLIAM JONES, on a text cited in the *Vivádárnava setu*. T.

same primitive or derivative stock with himself:" and in an excepted case the act is illegal *and void:* consequently, since the marriage of a woman sprung from the same primitive stock and the like is void, her son is excluded from inheritance; but a woman whose seasons have commenced, not being *so* excepted, her son shall partake of the heritage. We reply: a woman who has arrived at puberty, is also excepted by the following text:—

A man aged thirty years may marry a girl of sixteen, whose seasons have not commenced.

AMERA states the term which occurs in this text (*nagnicá*) as synonymous with *anágatártavá*, which signifies, "a girl whose seasons are not come."

It should not be argued that the text, "a man may marry a girl whose seasons have not commenced," relates to proper marriages in a moral view; for, on the subject of a marriage with a young woman who has arrived at puberty, a censure is delivered: "Consider him as the lord of a *Súdra* wife, as one for whom obsequies must not be performed, and with whom none should associate:" it is not intended, by the text above cited, to declare void the marriage of a young woman whose seasons had commenced. Many Sages have also declared it an offence to marry a woman sprung from the same primitive stock and the rest: it might be affirmed in like manner, that marriage with a woman not sprung from the same primitive stock is morally right, *and that the reverse is not civilly wrong.* To the question proposed some reply, it is admissible. But others say, in practice it is observed, that a son born of a marriage with a woman who had arrived at puberty, does obtain a share of the heritage: therefore, marriage with a woman sprung from the same primitive stock is void; but with a girl whose seasons have commenced, it must be deemed valid, like marriage with a *Súdra.* Accordingly, Sages direct the repudiation of a woman sprung from the same original stock with her husband, who had been espoused by mistake, if the affinity be afterwards discovered.

CCCXXXIX.

SUMANTU:—He who marries the daughter of his father's or of his mother's sister, or of his maternal uncle, or a girl sprung from the same primitive stock with his mother, or descended from the same ancient Sage *with his father*, must perform the lunar penance, and, divorcing that wife, must support her.

CCCXL.

BAUDHÁYANA:—He who inadvertently marries a girl sprung from the same original stock with himself, must support her as a mother.

"Descended from the same ancient Sage," in the text of SUMANTU, signifies sprung from the same primitive or derivative stock. Legislators have not ordained repudiation in the case of a woman *espoused* after her seasons had commenced; consequently, since no divorce takes place, he is bound to approach her in due season: hence the production of offspring by such a wife is legal, and the son shall therefore take a share of the heritage. Since 'SÚLAPÁNI remarks in the *práyaschittavivéca*, that the allusion to women sprung from the same primitive or derivative stock, in the text of

SUMANTU, is a mere instance of a general meaning, and since RAGHUNANDANA concurs in that opinion, must not a woman espoused after her seasons had commenced be also repudiated? No; for the implied sense is, any woman who ought not to be married by reason of affinity.—Again; since the repudiation of a young woman bearing the same name with the mother *of her husband*, is also directed in the hymn to VISHNU assuming the form of a fish,* it must be understood, say these lawyers, that her son shall be excluded from inheritance. It should be remarked, that since the marriage of a *'Súdra* with a woman sprung from the same primitive stock is authorized, the son born of such a marriage is capable of inheriting.

"The son of a wife not authorized to have issue by another, and the son begotten by the brother of the husband, on a wife who has a son then living, are both unworthy of the heritage" (CCXXXIV); the son who is begotten on a wife not authorized by spiritual parents, on failure of the husband, is unworthy of a share in the heritage of her husband, or of his own natural father. "Even the son of a wife duly authorized, not begotten according to the law *which has been propounded,* is unworthy of the paternal estate" (CCXXVI).

CCCXLI.

GÓTAMA:—A son begotten by another on a woman whose husband's brother is living, shall not take a share of the heritage.

Issue begotten by another, although the husband's brother be living, is not capable of inheritance. The *Retnácara.*

CCCXLII.

NÁREDA:—Those who are begotten by one, or by several fathers, on a woman not authorized to have issue by another, are all unworthy of the heritage; and they are sons of their natural fathers only:

2. They may offer the funeral cake to their natural father, if their mother were obtained for a price paid to her husband; but if she were not purchased, they shall offer the funeral cake to her husband alone.

"On a woman not authorized to have issue by another;" on a disloyal wife. "They are unworthy of the heritage;" they do not share the estate of her husband. The *Retnácara.*

They share not the estate of their mother, nor of her husband, nor of their maternal ancestors. The *Pracása.*

The notion is, that the word "only," in the phrase "they are sons of their natural fathers only," excludes the mother, maternal grandfather, and other ancestors. They shall take the heritage of the natural father, and not merely offer the funeral cake to him (CCCXLII 2). If the mother were purchased by paying a fee or price to her husband for the sake of obtaining issue, *they may offer the funeral cake to the natural father;* but if no purchase took place, they shall offer it to the married possessor of their mother. Such is the interpretation delivered in the *Retnácara.*

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* The *Matsya-súcta*, a hymn extracted, I believe, from the *Véda.* T.

CCCXLIII.

NÁREDA :—He who procreates issue, on a woman purchased for a price *paid to her husband*, *claims the offspring;* but if not purchased for a price *so paid*, the issue of the woman belongs to her husband alone.

CCCXLIV.

MENU .—If two sons, begotten by two *successive husbands*, *who are both dead*, contend for their property, then in the hands of their mother, let each take, exclusively of the other, his own father's estate.

Here the woman must either be a strumpet, a twice-married woman, or a disloyal wife. Thus the *Párijáta*, with which the *Retnácara* concurs. It should be here remarked, that, according to the *Retnácara*, the son begotten on a woman purchased by the payment of a price, though not authorized to have issue by another *than her husband*, shall offer the funeral cake to his mother's husband alone: but that contradicts the text of MENU (CCLIV). It should not be argued, that this text relates only to intercourse with the wife of another, for the sake of obtaining issue for himself. That is incompatible with reasoning; for, if the seed, *or male power* alone, generate a son, how can the child belong to the husband of the mother? Some affirm, that this must be established on the sole authority of positive law. Others hold, that the son of a woman not purchased from her husband becomes his offspring, by the text of NÁREDA (CCCXLII). That the son of a woman purchased from her husband is the issue of his natural father, must be deduced from the subsequent text (CCCXLII 2). "Not authorized to have issue by another" can be no significant epithet of a woman sold by her husband for a price received. The subsequent remark, "but if she were not purchased, &c.," relates to a woman fraudulently authorized to have issue by another. The text of MENU (CCXXIV) also relates to the case of a woman who has not bought: why it has been explained by the author of the *Retnácara*, as relating to a wife purchased *from her husband*, may be questioned. This concise exposition may suffice.

SECT. II.—*On Property not subject to Partition.*

CCCXLV.

MENU :—Wealth acquired by learning, belongs exclusively to any one of the brothers who acquired it; so does any thing given by a friend, received on account of marriage, or presented as a mark of respect to a guest.

Since the word "exclusively" precludes the rest of the brethren, it follows, that such wealth is not subject to partition.

What is received as a mark of respect, when a *madhuperca*, or gift of honey, curds, and butter, is presented, belongs exclusively to him *who receives the present.* The *Retnácara.*

CCCXLVI.

VYÁSA:—Wealth acquired by learning, or gained by valour, or received from affectionate kindred, belongs, when partition is made, to him who acquired it, and shall not be claimed by the co-heirs.

"Gained by valour;" acquired in war or the like. The *Retnácara*.

CCCXLVII.

CATYÁYANA:—What has been acquired by learning, after instructions received from a stranger, and a maintenance provided by one of a different family, is called wealth gained by learning:

2. What is gained by proving superior learning, after a prize has been offered by *some third person*, must be considered as the acquisition of a scholar, and ought not in general to be divided among co-heirs:

3. So what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee for answering a question in casuistry, or for ascertaining a doubtful point of law; or what has been gained as a reward for displaying knowledge, or for victory in a learned contest, or for reading the *Véda* with transcendent ability:

4. Such wealth have the Sages declared to be the acquisition of science, and not subject to distribution; and the law is the same in regard to *liberal or elegant* arts, and to increase of price from superior skill in them.

5. A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed, or a present from a pupil formerly instructed, Sages have declared to be the acquisition of science: what is otherwise acquired, is *the* joint property *of the co-heirs:*

6. Even what is won by surpassing another in learning, after a stake has been deposited, VRIHASPATI pronounces the acquisition of knowledge, and impartible:

7. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, BHRIGU calls the acquisition of science.

"After a maintenance provided by one of a different family," and by him only; else the text would be unmeaning, because every person who studies long, is at times supported by one of a different family. "Maintenance" is merely illustrative, comprehending vesture and the like. This is accurate. "One of a different family" alludes to the father. Consequently, what is acquired by that learning which was attained without using the property of the father, and not generally any wealth gained by the appli-

cation of science, is technically called wealth gained by learning. In like manner, it must be also understood that the means of subsistence common to the brethren or other parceners have not been used. The law-giver propounds a distinction respecting the mode of acquisition (CCCXLVII 2). This is pertinent, according to the opinion of CHANDÉSWARA and others.

What is received after displaying superior learning, for which a prize had been offered, is the acquisition of a scholar, and must not in general be divided among co-heirs. Some person saying, "no one can display pre-eminent skill in this lecture *of the Véda,*" a learned man replies, "if I prove superior learning, what wilt thou give me?" After a prize has been offered by the proposer *of this trial*, what is received by the learned man, on evincing superior learning, is the acquisition of a scholar. Such is the meaning, as apprehended by RAGHUNANDANA and JÍMÚTAVÁHANA.

So what has been received in the form of a gratuity, from a pupil, on account of instructions; or as a recompence from a votary, for the performance of a sacrifice by his family priest; "or as a fee for answering a question *in casuistry*," (for instance, any question being solved, when some person gives a reward not previously proposed;) "or for ascertaining a dubious point of law," that is, for relieving the doubts of one who thus proposed *a reward*, "to him who removes the uncertainty in the meaning of this ordinance I will give this gold," (or it may signify a fee, such as a sixth part or the like, which is received for deciding a question of law between two contending parties who apply for an award); "or what has been gained as a reward for displaying knowledge," that is, what is received from a wealthy man on consideration of learning, being told by others, or himself knowing, that a gift to a learned man is laudable: *such wealth is the acquisition of science.*

YAMA:—The wise have pronounced him worthy of gifts, who is adorned with science, endowed with virtue, resigned and gentle, subdues his passions, preserves strict veracity, is grateful and disinterested, is kind to cows, and protected by them, is liberal, performs due sacrifices, and belongs to the sacerdotal class:

2. A present should not be offered to the acceptance of such as neglect austerities, are ignorant of holy texts, and accept a livelihood under men of any class, however low; for a stone cannot transport a stone over *a river.*

What has been received as a reward for victory, in a contest relative to sacred literature, or any other learned controversy, is the acquisition of science. "Or for reading the *Véda* with transcendent ability;" when something is proposed to be given away, and a doubt arises to whom it shall be given, many deserving persons being proposed, what is given to one on account of veneration, for his transcendent ability in reading the *Véda*, is the acquisition of science. So what is gained by painters, goldsmiths, and the rest, through superior skill in *liberal or elegant* arts; and even that which is gained by victory over another in gaming or the like; all that is exempt from participation with others. The meaning is, that wealth gained by superior attainments in any *art or* science, belongs exclusively to him who acquired it. For the sake of elucidation, CÁTYÁYANA has delivered the precept diffusively. Such is the opinion of JÍMÚTAVÁHANA,

RAGHUNANDANA, and the rest. According to their opinion, "increase of price" must be explained what is gained by the increased value of a thing above the price at which it was purchased.

"For reading the *Véda* with transcendent ability;" for excellent lecture *of it*. "Increase of price;" what is received through the skill of one man, above the suitable price, becomes his several property: such is the meaning. "A prize *which was offered* for the display of superior learning;" what is gained by the display of pre-eminent knowledge, after a prize has been offered for superior learning, in this mode, "to him who evinces the greatest knowledge in this lecture, or in this contest, a hundred *suvernas* shall be given." What is received as a present in token of respect, from a votary for whom a sacrifice was formerly performed, or from a pupil formerly instructed, *is the acquisition of science. During a contest* between two learned adversaries, if any man say, "I will give money to him who proves conqueror," what is gained by him who overcomes his adversary. VRĬHASPATI pronounces the acquisition of knowledge. What is obtained by influencing the mind of the giver by such a boast as this, "I have studied this science;" what is received from a pupil, of whom a present is asked, (or what this pupil, studying texts of the *Tantras*, gives for the worship of the gods, or similar purposes; or what a student, coming to read the *Védas*, gives as a mark of respect to his preceptor, or as an auspicious offering to deities;) or what is given during sacrifice as a pious oblation to the gods, or as a mark of respect for the officiating priest; all that BHRĬGU *calls* the acquisition of science. Such is the interpretation of CHANDÉSWARA, MISRA, and others.

"What has been gained as reward for displaying knowledge;" what is received by one who boasts in a learned assembly, "I am superior to all," even though he fail in reading the *Véda* with transcendent ability, is the acquisition of science; but what is received in the mode abovementioned, by those who read the *Véda* with superior skill, although they do not themselves boast of their talents, must be also considered as the acquisition of science.

What a liberal man, anyhow knowing him to be learned, gives him as a present intended for the learned in general, delivering it near the bank of the Ganges, on a day of purity, in the form enjoined, is not a particular sort of wealth gained by learning, but is described by the phrase "what is otherwise acquired is the joint property of the co-heirs" (CCCXLVII 5).

Accordingly, "his own" is inserted in the expression, "what has been gained *by a man* as a reward for displaying his own knowledge"* (CCCXLVII 3). "For victory in a learned contest;" what has been gained, though no reward had been previously proposed, through the satisfaction afforded to a wealthy man by overcoming an adversary in a disputation. The term "excellent lecture" signifies transcendent skill in reading the *Véda*, *puránas*, or the like. Thus, a reward being promised in these words, "if any man recite this *Sác'há* of the *Véda* in one day, I will give him a hundred pieces of money;" then the recital of one *Sác'há* in one day is reading the *Véda* with transcendent ability.

Or this may be considered as a prize gained by proving superior learning. According to this opinion, the first hemistich of the sixth verse is

* Copying a version of this text as made by Sir WILLIAM JONES, I have omitted the term in question: as the sense is complete without it, I judged it unnecessarily to alter his translation. T.

read *vidyayá pańa púrvacam*, by superior learning after a prize had been offered. But, according to JÍMÚTAVÁHANA and others, it is read *vidyayá dyúta púrvacam*, by *surpassing another in* learning after a stake has been deposited. In *liberal or elegant* arts also, what is gained by the display of such peculiar qualities is the acquisition of skill in arts. The law is likewise the same in regard to the science of music and the like: the legislator declares it so in respect of the mercantile possession; "and the law is the same in regard to an increase of price" (CCCXLVII 4). What is the law respecting the military possession; is that unnoticed? To this MISRA replies; "science" signifies both arms and sacred literature: consequently it is noticed; and the acquisition of science must be also understood in the case of arms. In fact, wealth gained by valour will be mentioned in regard to the military profession: what is technically named the acquisition of science, is not exclusive thereof; but, according to CHANDÉSWARA and others, it must be affirmed to be common *to the co-heirs*.

Some explain "a fee for answering a question in casuistry," a reward received on account of the gratification afforded by the solution of a question; for instance, a man possessing immense knowledge attends an universal monarch, and discusses a question proposed by him, though he do not gain the victory *(for even in controversy a conqueror of worlds is invincible)*, yet, spreading lustre over the assembly, he receives a reward from the monarch. "A fee for ascertaining a doubtful point of law;" they explain this phrase in the sense abovementioned. Or the reward which a man receives for exhibiting extracts of books that remove the doubt, is the acquisition of science, and becomes his *exclusive property*.

The wages of mere transcribers, and generally the fee received from the audience for reading the *Véda*, *puránas*, or the like, without transcendent skill in poetry, and in *explaining* the sense of poems: this, and other similar gains, according to CHANDÉSWARA and the rest, are not the acquisition of science. In fact, in all cases whatsoever wherein superior skill is required, the wealth gained is technically denominated the acquisition of science, otherwise it is simply wealth acquired by the man himself. Such is the full sense, according to CHANDÉSWARA and others.

CCCXLVIII.

MENU:—What a brother has acquired by labour or skill, without using the patrimony, he shall not give up without his assent, for it was gained by his own exertion.

JÍMÚTAVÁHANA and the rest explain the particle "and" in this text of MENU* as bearing a causal sense. Consequently the meaning is, because it was gained by his own exertion, therefore it should not be given up to his brethren without his assent. Hence, every kind of wealth gained through learning and the like, being acquired by the man himself, is, without distinction, exempt from partition if the patrimony have not been used; but if that be employed, the rest of the brethren are specially entitled to receive the shares which will be mentioned: and that is *true*, without exception, in *every* case of wealth acquired by learning. It should not be argued, that, were it so, the particular explanation of the term, as propounded by CÁTYÁYANA, would be superfluous, because it would be

* In the reading here cited that particle does not occur. In another place the text is cited with this and other variations, which, however, do not affect the sense. T.

proper to affirm simply that what is gained through learning is the acquisition of science. The texts of CÁTYÁYANA are only intended for ample illustration. What then is the meaning of the phrase, "that which is otherwise acquired is the joint property of co-heirs?" Land or the like gained otherwise than in the mode mentioned, *for example*, by gratifying the donor with a present out of the paternal estate, is the joint property of all the brethren: the text must be so supplied. It should not be argued, that the acquisitions of science being stated at large by CÁTYÁYANA, no participation is admitted in wealth gained by learning, although the patrimony have been used; and the text of MENU (CCCXLVIII) is applicable to other cases. VYÁSA (CX) ordains the participation of brothers in wealth gained by valour, which is subject to the same law with the acquisition of science; and for this reason the same ought also to be admitted in the case of wealth acquired through learning. The analogy of acquisitions made by science and by courage must be inferred from the circumstance of VYÁSA having propounded the same rule as applicable to both (CCCXLVI). This text also must be referred to the case where the patrimony is not used. That may be actually used at the time of so acquiring the wealth; and even in the case of property acquired through science *after instructions and maintenance* received from the father, the patrimony has been used. This is virtually declared by CÁTYÁYANA (CCCXLII). On the authority of another text of the same legislator, the participation of the other brothers must be acknowledged in wealth gained by learning, which was *acquired through instructions* received from paternal uncles or the like; for the words "by their father" would be nugatory, if family were referred solely to the paternal grandfather and the rest. JÍMÚTAVÁHANA and others so expound the law.

CCCXLIX.

CÁTYÁYANA:—Yet VRĬHASPATI has ordained, that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father, or by their paternal grandfather *or uncles*; and it is the same if the wealth was acquired by valour, *with assistance from the family estate.*

If any person appointed by some wealthy man possessing a taste for literature, to distribute among priests a sum of money presented as a donation to many *Bráhmanas*, covetously reserve a large sum for himself, distribute the small remainder among priests, and again take back a part as a mark of respect *due to himself*, should the donor, afterwards informed of the circumstance, acquiesce in that misappropriation, reflecting "he also is a *Bráhmana*, my purpose is therefore fulfilled;" or if any person skilled in the science of accounts, and somewhere employed in the service of the king, have taken possession of some land, and no other public officer dare to oppose him, and the king when informed of it does not disapprove *his conduct* through excessive partiality, what is the settled rule of division in either of these cases?*

If science had been studied in both families, or have been acquired by instructions received from the father, with a maintenance provided out of his estate, brothers may claim shares *of what is gained*, because the patrimony has been used. If this be alleged, the answer is, when some

* The author has left his question unanswered. T.

wealthy man has attained his purpose through money expended by the father, and afterwards contracts a friendship with the son as with a stranger, the rest of the brethren might also claim a share of any thing given *by him* to that son for the sake of enhancing friendship. The rest of the brethren can only claim shares of that wealth, for the acquisition of which money was expended *out of the family estate*, or which was acquired by learning attained through the instructions of the father with a maintenance provided out of the patrimony. Accordingly it is remarked by JÍMÚTAVÁHANA, that wealth acquired with the use *of the common stock employed* for that very purpose, is justly considered as joint property; but in the present case, the money has been expended for another purpose, and science is not among the means by which this gift is obtained: brothers cannot therefore claim a share. If this be alleged, the answer is, if the rest of the brethren cannot participate when the use of the patrimony is mediately *connected with the acquisition*, what argument proves joint property, when science, attained by instructions received from the father, is mediately connected with the acquisition? Some lawyers reply, brothers cannot claim a share *of property so acquired.*

Is not the law thus explained: in the case of such wealth as is technically named by CÁTYÁYANA the acquisition of science, if the patrimony have not been used, no share shall be given to any other brother; but if it have been used, a co-heir less learned than the acquirer, or wholly ignorant, shall be excluded from participation, but one equally or more learned shall receive a share?

CCCL.

CÁTYÁYANA:—Wealth acquired by a learned heir shall never be divided among his ignorant co-heirs; but he shall share it with such of the parceners as are equal or superior to himself in learning.

"Ignorant;" destitute of, or possessing less learning; for grammarians hold that the negative particles bear six senses; similitude, privation, diversity, paucity, want of excellence, and contrariety.* "Learned;" adorned by science. Wealth acquired by him *shall* never *be divided among ignorant co-heirs*, whether joint property have or have not been used. "Equal or superior to himself;" the word learning, employed ambiguously, is referred to both terms: the meaning therefore is, such of the parceners as are equal, and such as are superior in learning. Thus JÍMÚTAVÁHANA and RAGHUNANDANA. But others explain the phrase by *regular* apposition: superiority in learning is signified by the single term "superior;" as in the phrase DÉVADATTA is the most handsome, and YÁJNYADATTA is next, the last term signifies handsome in the next degree.

The law should not *be so explained as advanced in the question proposed*; for, NÁREDA declaring that wealth acquired without supplies from the joint stock shall not be shared with ignorant co-heirs, it thence appears, that, if supplies were furnished from the joint stock, the acquisition of science must be shared even with unlearned co-heirs.

CCCLI.

NÁREDA:—A learned heir shall not give a share out of his own *acquired* wealth to an unlearned co-heir without his assent, unless it were gained by him receiving supplies out of the patrimony.

* A citation from the Metrical Rules of BHARTRÍHERI.

CCCLII.

YÁJNYAWCLAYA:—Any other property which a man has himself acquired without using the patrimony, and any thing given by a friend, or received on account of marriage, shall not be shared with co-heirs.

2. He who by his own pains, *and at his own charge*, recovers *or repairs* what has descended from his ancestors, and has been long taken away, *or nearly destroyed*, shall not bring it into partition with co-heirs, *unless it be land*, nor what he has *thus* gained by his learning.

"Any other property;" other than a thing given by a friend or the like. The acquisition of science being also suggested by the first text, the expression "nor what he has gained by his learning," is superfluous. If this be alleged, the answer is, No; for it is intended to exclude unlearned co-heirs (even though joint property have been used,) from partition in that which is different from the several property described in the first verse of CÁTYÁYANA (CCCXLVII 1), and which is acquired through learning attained whilst a maintenance was provided by the father. There is no difficulty in affirming this to be the opinion of SÚLAPÁNI. In like manner, if any thing have been received from a friend, it is only exempt from participation when the joint stock has not been employed *to obtain the gift*. "Any thing received from a friend" is a mere instance of a general meaning.

CCCLIII.

NÁREDA:—Three sorts of wealth are in general not subject to partition; what is gained by valour, what is given by the kinsmen of a wife, and what is acquired by learning; and also any thing that has been received by the favour of a father, *or other friend*.

2. And this law is also observed in the case of him to whom any thing has been given by his mother, through affection, out of her own several property; for, as a father, so has a mother power *over her own*.*

Reserving what was given by the kinsmen of a wife, (or wealth received at the time of accepting a wife,) and what was gained by valour, or acquired by learning, let him distribute any other property: the text should be so supplied. The reason is mentioned, because these three sorts of wealth are not subject to distribution. What has been received by the favour of a father, is also exempt from partition.

CCCLIV.

VYÁSA:—What is given by a paternal grandfather, or by a father, as a token of affection, belongs to him who receives it; neither that, nor what is given by a mother, shall be claimed by co-heirs.

* The second verse was cited a few pages lower; I insert it here to avoid the necessity of repeating the first verse. T.

2. What a man gains by his own strength, without reliance on the patrimony, he shall not give up to the co-heirs, nor what he acquires by learning.

Joint property may have been used even for the acquisition of wealth received in donation. For example, a man obtains a gift by gratifying the donor with presents on his own part. Accordingly it is thus recorded, "In the *Cali* age, a follower, or one admitted to fellowship, obtains presents."

According to JÍMÚTAVÁHANA, and the rest, there is no distinction. The author of the *Pracáśa*, JITÉNDRIYA, and others, hold the very same opinion. But MISRA, CHANDÉSWARA and the rest affirm, that some distinction appears to be intended by VYÁSA, who declares that no share of wealth acquired without using the patrimony shall belong to him who did not contribute to the acquisition; and afterwards adds, "nor what is gained by learning" (CCCLIV 2): and the distinction seems to be this; another brother shall have no share of wealth acquired by *learning*, even though supplies have been furnished out of the common stock.

It should not be argued, that, in other cases, when joint property has not been used, no other shall participate *in the wealth gained;* nor in *that which is called* the acquisition of science, as described by CÁTYÁYANA (CCCXLVII): but, wealth gained by science being again mentioned, the rest of the brethren may claim shares of that which is acquired by learning in modes other than those described by CÁTYÁYANA, even though supplies have not been received out of the joint property. No such meaning is suggested by the texts of VYÁSA and YÁJNYAWALCYA: for you must thus interpret the text of VYÁSA (CCCLIV 2); what is gained without reliance on the joint stock, the acquirer shall not give up to the co-heirs; he shall not give up to them that wealth, technically named by CÁTYÁYANA the acquisition of science, *which is gained* without using the joint stock. The same meaning also results from the text of YÁJNYAWALCYA, connecting the last phrase with the preceding terms "acquired without using the patrimony" (CCCLII 1): thus also it does not appear that he shall not give up *to the heirs* wealth which is acquired by learning, but which is not technically called the acquisition of science. Nor should it be argued, that, in like manner as it appears from the precept, "five creatures with five claws may be eaten," that man and other five-toed animals, excepting *only* the hare, porcupine, tortoise, rhinoceros, and crocodile* of the Ganges, are forbidden food; so wealth acquired by learning in other modes than what is technically denominated the acquisition of science, appears not to be exempt from participation. "Five" being specified that may be suggested in respect of five-toed animals; but in the present instance, since the term is not restricted by the epithet "technically so called," no such meaning is suggested: for the sense of the

* With deference I wish to correct the translation of a verse of MENU relating to this subject (Ch. V, v. 18). In his interlineary version, Sir WILLIAM JONES had translated *c'ha'dga*, rhinoceros, which is the undoubted meaning of the word. I can assign no reason for his substituting the *Sanscrit* word *gandaca*, which is another name for the rhinoceros. In the same version, Sir WILLIAM JONES translated *gód'há*, iguana; I am led to understand by that term the *gódhicá* or lacerta gangetica, named *góhi* and *gariál* in the vulgar dialects of Bengal; the iguana is in *Sanscrit* called *gaud'héra*, *gaud'hara*, *gaud'héya*, and *gód'hicátmaja*, which literally signifies offspring of the lacerta gangetica. May I add, that this species of alligator has been ill described by European naturalists; and, through a strange mistake, has been called the open-bellied crocodile. T.

precept is "five creatures with five claws, and no other five-toed animals, may be eaten;" but in the present instance, is not the answer *furnished by the text*, "he shall not give up what is acquired by learning? Nor should it be argued, that what is stated by VYÁSA in the first hemistich (CCCLIV), is elucidated by the concluding terms of the same text "nor what he acquires by learning," and that the text of YÁJNYAWALCYA must be expounded in a similar mode. The words "wealth acquired by science," which occur in another text of VYÁSA (CCCXLVI), would be unmeaning. But at present the text cited (CCCXLVI) is considered as relating to the acquisition of science technically so denominated by CÁTYÁYANA (CCCXLVII 1 & 2, &c); the words "nor what he acquires by learning" (CCCLIV) merely illustrate the preceding part of the same text: there is not consequently any vain repetition.

After declaring the acquisition of science and of valour exempt from partition (CCCXLVI), a distinction is expounded in another text (CCCLIV), the expression "what he gains by his own strength" being there employed, it relates to the acquisition of valour; by a text formerly cited (CX), partition is ordained by VYÁSA when no special ground of exemption exists: hence there is nothing superfluous; for, an exception opposed to a general maxim, and a general precept opposed to a special rule, cannot be deemed superfluous. It should not be argued, that, were it so, the technical sense of the term "acquisition of science," would be vainly propounded by CÁTYÁYANA (CCCXLVII 2, &c). The author of the *Pracáśa* says, the texts of CÁTYÁYANA elucidate those acquisitions of science in which the patrimony is not used: or, *it might be replied*, CÁTYÁYANA has delivered a full explanation of the term "acquisition of science."

If this be alleged, the answer is, a distinction being taken by texts of law (CCCLX) in regard to the acquisition of valour, it appears that a distinction does exist in regard to such acquisition. These texts (CCCLX) do not relate to wealth so gained by valour, when paternal property has not been used; for, in this instance also, the riding horse, weapons or the like, may have belonged to the father. Nor can it be inferred, that, this *acquisition* being specially mentioned, any other wealth gained by valour must be acquired with aid from the patrimony. It is possible that an indigent son may display his courage, having received a horse, arms, and the like, from some person pleased with his eloquence, humility, and so forth. Nor is it merely an ample explanation of the term. It would be improper to omit the obvious *gain of military* pay, and only state wealth acquired through favour in consequence of an arduous achievement. The distinction does not consist in this, that soldiers, trained to arms in their own families, shall give a share of such gains to other brothers. Were it so, it would be inconsistent with reason; for, wealth gained by valour generally (that is, military pay), if acquired without supplies out of the patrimony by soldiers trained to arms in their own families, is not subject to partition: that the reward of a gallant achievement should in similar circumstances be partible among co-heirs, would be inconsistent with reason. Nor is it ordained that a share shall be given to a learned co-heir *in all cases* without exception; for that would be inconsistent with reason. Consequently, since it is settled that what is technically called the acquisition of courage, shall not be partible even though joint property have been used; but the soldier's pay, and any other wealth gained by valour, is partible, if the joint property have been used, but not otherwise; the same rule of decision should be also inferred in regard to the acquisition of science and the like.

Thus partition of wealth gained by valour, which is ordained by a text formerly cited (CX), relates to the hire *of the soldier*, not to the reward of a gallant achievement; another law of VYÁSA (CCCXLVI) relates to that which is technically called the acquisition of learning, or of valour; the text of VYÁSA last cited (CCCLIV), mentioning "by his own strength," as well as the law of MENU (CCCXLVIII), which expresses "by his own valour," alludes to that which is acquired by agriculture or the like; the concluding part of the text, "nor what he acquires by learning" (CCCLIV) relates to wealth gained by a common recital of sacred poems and the like; and, through the connective particle, it alludes to the wages of valour: the phrase in the text of MENU (CCCXLVIII), "and what was gained by his own exertion,"* comprehends every other acquisition.

Is not this inconsistent with the text of NÁREDA (CCCLI)? for it is there suggested, that a learned man must give to an unlearned co-heir a share of wealth acquired through science, which was attained while supplies were received by him out of the patrimony? To this CHANDÉSWARA replies, the intention is this: when a parcener, who attained science, receiving food, apparel, and other supplies out of the joint property only, earns wealth by his learning without reliance on the common stock for supplies, then no share shall be given to the unlearned co-heir: if he do rely on the joint stock for his maintenance, what is so acquired through science must be shared even with unlearned co-heirs: but if the joint stock were not used *by him* at the time of his acquiring knowledge, then no part of his gains shall be given up to any ignorant co-heir, even though he receive supplies from the joint stock during the time of acquisition, but he shall give a share of that wealth to the learned co-heir alone; since VYÁSA, having ordained the severalty of wealth gained without the use of the patrimony, separately declares the acquisition of science exempt from *general* partition. Accordingly the indivisibility of wealth acquired by learning, which will be again mentioned, must be referred to the case when supplies were received from the joint stock at the time of acquiring wealth through that science, which had been attained with a maintenance provided out of several property. *Thus far* CHANDÉSWARA.

This may be here briefly stated as *resolving itself into* four cases. 1st, The acquisition of wealth by one instructed in science after a maintenance provided out of the paternal estate, but without using the common stock *during the exertion for gain*. 2d, The same case, but expending joint property during the acquisition. 3d, The gain of wealth by one who attained science without supplies from the common estate, but who uses the joint stock *during the exertion*. 4th, The same case, but without expending joint property *during the acquisition*.

1. In the first case, it is pronounced his own acquired property, not to be surrendered to ignorant co-heirs, under the texts of GÓTAMA (CCCLV), and CÁTYÁYANA (CCCL); whence CHANDÉSWARA concludes by saying, it shall not be given up to an unlearned co-heir.

CCCLV.

GÓTAMA:—A learned man shall not give a share *of his own acquired property* to an ignorant co-heir against his own will.

* In compliance with the former gloss, it has been translated in a causal sense. T.

Does it not follow, that the text of NÁREDA (CCCLI) relates not to such wealth as is technically named the acquisition of science? for the condition, "unless it were gained by him receiving supplies out of the patrimony," would not be pertinent: and it is subsequently remarked by CHANDÉSWARA, in his gloss on the text of VYÁSA (CX), that it must be considered as relating to wealth acquired by learning, valour, and the like, *but* distinct from what is technically denominated the earnings of science or of courage. The text (CCCLI) must therefore relate to the acquisition of wealth through knowledge attained with a maintenance provided out of the joint stock: the precept of CÁTYÁYANA (CCCL) must of course relate to the same subject, not to the acquisition of science technically so called; since it bears the same import with the law propounded by NÁREDA. Or the rule of decision in both cases is established by the texts of two Sages. It should not be argued, that the precept delivered by NÁREDA may also relate to the acquisition of science technically so called, because that is the obvious interpretation. The technical denomination would be superfluous; and the expression "nor what he has thus gained by his learning" (CCCLII 2) would be unmeaning. At present that denomination serves to exclude ignorant co-heirs from participation in wealth named the acquisition of science, even though supplies have been received out of the joint property. Nor should it be argued, on the authority of the text of CÁTYÁYANA, that the acquirer must give a learned co-heir *a share of* such wealth which he has gained without using the general stock. It would be inconsistent with common sense that it should be joint property, when no use has been made of the joint funds. By excluding the ignorant co-heirs from participation when wealth gained by learning is distributed, and by the particle "but," *which occurs in the text*, it suggests the law, that learned co-heirs shall participate; and the distribution, previously hinted, is contemplated *in the precept*. Hence distribution is not ordained by the text in the other supposed case.

But other lawyers consider as accurate the reading approved by CHANDÉSWARA and JÍMÚTAVÁHANA in the text of NÁREDA; *vaidyó vaidyáya*, a learned heir *shall not give a share* to a learned co-heir, instead of *vaidyó vidyáya*, *he shall not give it* to an unlearned co-heir; *according to them*, the sign of the privative *A* occurs in some books through the carelessness of the transcriber: consequently the meaning is, a learned heir shall not bring into partition, with a learned co-heir, wealth technically named the acquisition of science, and which he has gained without using the patrimony. CÁTYÁYANA propounds a distinction in respect of learned co-heirs (CCCL). On the texts of these two Sages, wealth gained through science attained with supplies out of the patrimony, shall be shared with such of the parceners as are equal or superior in learning. Such is the result.

The remark of CHANDÉSWARA may be accurately applied *to these texts*. Thus, to explain their sense, he first notices the rule respecting gains not technically named the acquisition of science; "when a parcener, who acquired learning, receiving food, apparel, and other supplies out of the joint property only, earns wealth by his knowledge, &c.:" and this is intended to render the explanation perspicuous, by stating the whole of the various rules concerning wealth acquired by learning: the expression, "receiving food, apparel, and other supplies out of the joint property only," is merely an instance which intends every sort of wealth gained by learning, but not technically named the acquisition of science: "unlearned co-heir," at the

close of that sentence, is also a mere instance, intending generally any person who did not contribute to the acquisition. The commentator proceeds to explain the object of both texts; "but if the joint stock were not used by him at the time of his acquiring knowledge, then no part of his gains shall be given up to any co-heir, &c.:" to remove the doubt whether a learned man be also excluded, the commentator adds, "but it belongs to the learned alone:" that is, taking the sixth case in the dative sense, "the acquirer shall give a share of that wealth to the learned co-heir alone;" the sentence must be so supplied. Consequently the acquisition of science as defined by CÁTYÁYANA (CCCXLVII 2, &c.), shall not be shared with any co-heir whomsoever, even though food and apparel were received out of the joint property during the attainment of knowledge, provided the common stock were not used during the acquisition; in like manner as wealth gained by agriculture and the like, is *in similar circumstances* exempt from partition. If the joint stock be only used during the acquisition of the wealth, it shall be shared with the learned co-heir alone, under the texts of NÁREDA and others (CCCLI): if the joint property be so used in both periods, the gain shall be shared with all the co-heirs; for it falls under the text which allots a double share to the parcener who made the acquisition (CX), since it is not such property as is technically named the earnings of science. But wealth otherwise acquired through learning, must be shared with all the parceners, if the joint stock have been used during the acquisition; but with none of them if it were not so used, for no text ordains *their participation. The law may be* thus briefly *expounded.* It is not customary, nor reasonable, nor directed by the letter of the law, that a share should be given to the learned co-heirs *only*, when the wealth was acquired in the modes described by CÁTYÁYANA (CCCXLVII 2, &c.), but the joint property had been used during the attainment of science; for it appears from the text (CCCXLVII 1), that any other wealth *(not acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family)* is not the acquisition of science; it does not thence appear that shares shall *only* be given to learned co-heirs. As for what is argued, that, since nothing is expressly mentioned in the text which ordains the participation of the learned, it must relate to the *use made of* joint property; that should not be considered as equitable, for it can have been no where mentioned, that *the rule* depends on the supplies received out of the joint stock during the attainment of the means of *acquiring wealth*. Thus do these lawyers expound the law.

2. In the second case, all the brethren shall have their due shares, distributed in the mode which will be mentioned; for the text of VYÁSA (CX) implies the use of joint property during the acquisition; and a similar *meaning is deduced* from a precept delivered by NÁREDA (CCCLI). This is actually declared by CHANDÉSWARA; "if he do rely on the joint stock for supplies, what is so acquired must be shared even with unlearned co-heirs."

3. In the third case, the gain shall be shared with a learned co-heir; as implied in the text of GÓTAMA (CCCLV), and declared by CÁTYÁYANA (CCCL). This is expressly said by CHANDÉSWARA; "he shall give a share of that property to a learned co-heir:" and it is reasonable; for, if a learned brother may claim a share because the joint property was employed during the attainment of the science, why may he not do so if it be used during the acquisition of the wealth?

4. In the fourth case, another brother, even though superior in learning, is excluded from participation; for, the text of CÁTYÁYANA (CCCL) being referrible to a case where joint property is used, there is no argument by which the general sense of the text of MENU (CCCXLVIII) can be restricted. Again; in the law propounded by YÁJNYAWALCYA (CCCLII), the words "without using the patrimony" are not connected with the subsequent part of the text, "any thing given by a friend, &c.;" but, in the following verse (CCCLII 2), "without using the patrimony" must be supplied, from its coincidence with *laws delivered by* other Sages. Or the words may be connected, *say some lawyers;* and knowledge attained by instruction in another family must be considered as the fourth case; it is similar to *that of science attained with* a maintenance provided by one of a different family. HELÁYUDHA delivers this opinion. MISRA holds, that what is acquired, even with reliance on the joint property, by one who was instructed in arms or in science by a stranger, and who subsisted on a maintenance provided by an indifferent person, and whose family was not supported by the co-heirs during the attainment of science, is the acquisition of knowledge, and exempt from partition: but the text of NÁREDA (CCCLI) relates to the case where the joint property was used for the attainment of science, as well as for the acquisition of wealth. The *Párijáta* and others in every instance connect the words, without using the patrimony," with the attainment of knowledge. They support the opinion of JÍMÚTAVÁHANA and the rest; the text of CÁTYÁYANA (CCCL), who is the propounder of the technical term "acquisition of science," is pertinent, as it relates to that subject; but the preceding text (CCCXLVII 2) is not *intended as* an explanation of the technical term: the law propounded by NÁREDA relates to what is named the acquisition of science, and also to what is not so denominated; it has the same import with the precept delivered by CÁTYÁYANA: this mode of interpretation is simple. But, in the exposition of CHANDÉSWARA and the rest, there is nothing incongruous; and the technical denomination, as explained (*according to their opinion*) in the texts cited (CCCXLVII 2, &c.), may have its use. Such is the difference.

'The mode of interpretation is simple:' thus, what is gained without using the patrimony is exempt from partition; what is acquired with the use of it shall be divided; what is technically named the acquisition of science, being gained without employing the common stock, shall be shared with no one: such are the three rules according to JÍMÚTAVÁHANA and the rest. Any other wealth, except that which is named the acquisition of knowledge, being gained with supplies provided out of the joint property, shall be shared with all the co-heirs; what is so named shall be shared with a learned co-heir, if the patrimony have been employed either in acquiring the science or the wealth; such property, gained without using the patrimony, shall be shared with no one: such are the three rules according to CHANDÉSWARA and the rest. Here the insertion of a condition in the first rule, 'except that which is technically named the acquisition of science,' and the condition annexed to the third, 'property so named,' are burdensome.

'There is nothing incongruous in the exposition of CHANDÉSWARA:' thus all the learned co-heirs have shares of wealth, gained even without using the joint property, by the arduous achievement of one who attained knowledge, receiving food and apparel, and other supplies, out of the joint-stock: *but* no one has a share of wealth acquired in agriculture or the like,

(with a plough and other implements received from a stranger), by the labour of one whose body had been nurtured with much food provided out of the common stock: a disparagement to science would follow as a consequence; *which is* an absurdity arising on the exposition of JÍMÚTAVÁHANA and the rest, *but avoided by* CHANDÉSWARA. If it be argued, that no other brother shall have a share of wealth acquired without using the joint property, even by one who attained science after a maintenance provided out of the common stock, then the separate mention of "what is acquired by learning," in the texts of VYÁSA and others (CCCLIV), would be unmeaning.

If any man give a suitable reward to one who was unwilling to teach gratuitously, what is the rule in that case? (The payment of such a recompense is legal, as appears from the following text):—

Smriti:—Whoever gives a subsistence to a teacher, and causes him to instruct twice-born men, what has he not given, *which was requisite to the attainment of his purpose*, desirous as he was of *fulfilling his* duty, *of obtaining the gratification of his* wishes, and *of acquiring* riches?*

To the question proposed the answer is: according to JÍMÚTAVÁHANA, it is the acquisition of knowledge, for it is received on account of science. Hence the rule of decision must be drawn from a consideration of *the fund, whence* food, apparel, and other supplies *were provided* during the period of receiving instructions *in the science, which is afterwards taught*. But, according to CHANDÉSWARA and the rest, it is not such wealth as is technically named the earnings of science. Hence, if the joint property were used during the acquisition of the wealth, all the co-heirs shall have shares; if it were not used, but food and apparel were supplied out of the joint stock *during the period of study*, a share must be given to a learned, not to an unlearned co-heir; if a maintenance were not received out of the common stock *during study*, nor any use made of the joint property *during the acquisition*, no share shall be given to any person. This brief explanation may suffice.

If food and vesture have been received for some time out of the common stock, and afterwards obtained in alms or the like, or if the science were studied for some time in the student's own family, and afterwards in a different one, what is the rule of decision in these cases? Wealth acquired by that science, during the attainment of which food and vesture were supplied out of the common stock, or which was learned in the family, is not technically named the acquisition of knowledge. If the same science be of both descriptions (*partly learned in one period, and partly in the other*), what is the rule of decision in regard to wealth earned by that knowledge? *It must be settled* by a nice distinction; the teacher, and the maintenance during study of that branch of a single science, such as astronomy or the like, by which the wealth was gained, must be inquired. so likewise in philosophy and other sciences, the study of that controversy, respecting which a question was proposed, must be ascertained. But if grammar, which is universally requisite, have been learned in the student's own family, what is the rule? To this it is answered, although grammar, which is necessary to the science that becomes the means of acquiring

* Which are the three rewards of gift and of other meritorious acts. T.

wealth, have been learned in his own family, still, if that particular science through which it is gained be not there learned, it is unexceptionably called "the acquisition of knowledge." If a minute distinction cannot be made, the matter must be adjusted in the proportion which may be settled by an intelligent *arbitrator*. For instance, if the science, which becomes the means of earning money, be half learned in the man's own family, then half the wealth acquired should be distributed among the co-heirs, in such shares as are ordained by the law.

The distribution ordained by law assigns two shares to him who made the acquisition, and one to each of those who did not contribute to it; for the text of VYÁSA *directs such a distribution* (CX). "Carriage and weapons," in the precepts cited, are mere instances of property in general. "Supplies from the common estate" alludes directly to the horse, or carriage, or the like; and indirectly, by the authority of the text, to science as the means of acquisition. The share of wealth gained by knowledge, which is ordained by CÁTYÁYANA and others to be given to a learned co-heir, does not intend an equal share, for the import is the same with this precept (CX).

CCCLVI.

VASISHT'HA:—He among them who singly acquires wealth, shall take a double share of it.

This text also relates to wealth gained after supplies received out of the common estate; for it is declared, that the acquirer shall take the whole if he use not the joint property (CCCXLVIII). Since the "patrimony" is mentioned in the texts of MENU and others, this *double share* must be understood, when the acquisition is effected by the use of any property which belonged to the father, not by the simple use of property *in general*. In like manner, if one brother acquire wealth in concert with his father, he ought to receive a double share. Accordingly MENU ordains equal partition of wealth gained by the co-operation of all the brethren (XXIX). But, in this case, the father is a thing common to all his children; for he is the sire of them all. Consequently, if the father of five sons caused fifty *suvernas* to be earned by one of his children, in that case, after his death, the sum shall be divided into six shares, and the acquirer shall take a double allotment, consisting of a trifle more than sixteen *suvernas* and a half: the rest shall take one share each, amounting to little more than eight *suvernas*.

In the case of an acquisition made by the son with the co-operation of his father, since both contributed thereto, ought not the sum to be divided into two parts, out of which one (*namely the acquirer*,) should take one part; and the residue being divided into five parts *after the death of the father*, all the brothers should receive one share each? It should not be objected, that, were it so, the distribution ought to be similar even in the case of an acquisition made by the use of joint property; one share should be allotted in consideration of the property used, and be sub-divided into five parts, and one undivided share should belong to the acquirer. Since the common estate has not, like a father, power to acquire wealth, it is regular to make the distribution as ordained by the precepts of legislators. Nor should it be objected, that, since RAGHUNANDANA directs the allotment of two shares, if one acquire wealth by using the horse of another or the like, equal partition is proper, although the horse or other common property can-

not of its own accord effect the acquisition.—Whatever may have been the notion of RAGHUNANDANA, the acquirer is also entitled to a double share, by the precept of the legislator, if he use a horse belonging in common to the parceners, or any other joint property. It should not be objected, that, in the case of an acquisition made in concert with the father, he is a thing common to all his children. On the contrary, in the case of a gain made by the *common exertion of* father and son, since the latter is alone subordinate, he ought to be considered as the instrument of the acquisition made by the father. Does not this appear an unjust disparity? *for*, if the father be acknowledged subordinate in the instance of a gain made by both, (*through the active exertion of the son under his father's directions*,) the son, who makes the acquisition, shall receive sixteen *suvernas* in the case above mentioned:* but if their equality be admitted, the acquirer has thirty *suvernas after the death of his father*, and the rest five each. If this be proposed, the answer is, what difficulty *can follow from the admission?*

To this some reply, the decision should be regulated according to the superior influence of the acquirer, or of the means of acquisition. Thus, if cavalry alone be required, and hire be only obtained from the king, or other employer, on producing a horse, the beast is chiefly considered; if making war be also required, both are equal; but if the soldier undertake warlike service even without a horse, and the beast be merely used as a conveyance, it is less considered. So, if the son alone practise the means of acquisition, and employ his father *in a subordinate office*, then the son shall have two shares, because he chiefly contributes to the gain; if the father chiefly promote it, or both equally, then since both are acquirers of the wealth, the son shall have half; even though the father principally contribute to the gain, the son may claim a share as the instrument of the acquisition, which ought to be rewarded with half the gain, and for which the legislator directs the allotment of a double share to the brother who acquires wealth by the use of the common stock. This is fully declared. In fact, participation is only proper when the joint stock has been used. A seeming disparity is thus obviated, namely the allotment of a double share only to one who practised agriculture, taking a rope for his plough out of the common stock, but employing his own several cattle and implements, or to one who begged alms after travelling to a foreign country with a pair of shoes taken from the common stock, at the same time that a double share is likewise allotted to one who practices agriculture with the whole of his implements supplied out of the common stock, or who goes to a foreign country and acquires wealth by *the use of* carriages, slaves, or various other means furnished out of the joint property: for this seeming difficulty is reconciled by a proportionate allotment. Accordingly JÍMÚTAVÁHANA observes, this alone is hereby proved, that one who has used joint property, must make a distribution in proportion to that part, whether little or much, which has been used by him. Thus do these lawyers expound the law.

In like manner, if any thing be given by a pupil jointly instructed, or by a votary, or any other person so connected with all the parceners, in consideration of that very relation, the rule of decision is the same; yet if it were given by persons whose acquaintance originated in that relation, but in consideration of the good qualities of the donee, it should not be distributed among all the co-heirs, although the acquaintance arose from such a connexion, because this was not the motive of the gift.

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* See the preceding paragraph. T.

Is not the *universal* allotment of two shares inconsistent with reason? for if one of five brothers gain thirty *suvernas* with supplies out of the common estate, he gives twenty to his brothers, and reserves ten for himself; in effect he receives five *suvernas* as the reward of the acquisition: another man of no more than equal merit, who has two brothers, gains thirty *suvernas* with the same labour and with equal use of joint property; he gives fifteen to his two brothers, and reserves an equal sum for himself; in a word, he takes seven *suvernas* and a half as a reward of the acquisition. Thus one who has two brothers may receive more than one who has four, even though he be inferior in ability; which is an unjust disparity: the greater number of brothers is no fault on the part of the acquirer, wherefore he should sustain a loss. It should not be answered, that the text of VYÁSA must be referred to the case of him who has two brothers, and a proportionate distribution must be made after the same mode in the instance of one who has three or more. The plural number, not the dual, is employed in the text; "the other parceners must have equal shares" (CX 2). Nor should it be argued, that an indeterminate sense of the plural number must be necessarily inferred from the object in contemplation. By such indeterminate use, it is suggested, that the literal sense is not indispensable, not that the text is inapplicable to the case of many brothers; for that no where occurs except in the instance of the word *dára* (wife) and other terms, *masculine or plural in form, but feminine or singular in sense.* Nor should it be argued, that the distribution must be made, in favour of the acquirer, in that form which is observed when the whole is divided into two shares; and consequently the virtual sense is, that half shall be given to the acquirer, and thus nothing incongruous occurs in any instance. No *respected* author has said so.

If this argument be proposed, some reply, when the distribution is regulated by the greater or less degree of labour, it must be acknowledged, that the acquirer does in some instances receive half the gain: if the text be accurate when referred to this case, the silence of authors is nothing to the purpose.

But, in fact, this does relate to partition of heritage. If one among associates in commercial adventure, who are related to each other, as sons of sisters, take a horse appertaining to the partners, and acquire wealth *in a separate occupation*, no legislator has ordained that the acquirer shall have a double share *only*; the hire of the horse, or the like, not a share of the gain, shall be received *by the partners as owners thereof;* for it is incongruous that a share should be allotted to an irrational animal. A *specific* portion may nevertheless be received by way of hire under a special agreement. Again; brothers who did not contribute to the gain receive shares, because the acquisition was made by their own father and brother, with whom they are co-parceners, and by *the use of* a horse appertaining to them in common: accordingly, when brothers are numerous,* the multitude of them is just such a fault, as it is in a father to have many sons when he himself makes a partition *of hereditary wealth.* Hence also JÍMÚTAVÁHANA has obviated the doubts which might have been entertained, whether parceners, who did not contribute to the acquisition, shall have shares of the wealth, though gained without the use of the joint property, excepting only the earnings of valour and the like.

If there be any argument for the participation of those who did not contribute to the acquisition, when any thing is gained by an undivided

* This ironical argument alludes to an objection stated above. T.

brother, even without the use of joint property, why should it be set aside? It should not be argued, that their participation is denied by the texts of MENU and others (CCCXLVIII). Since the precept of MENU expresses "by labour and skill," and that of VYASA "by his own valour or the like" (CX), and the terms employed in the text of YÁJNYAWALCYA "property which a man has himself acquired" (CCCLII), may be explained as relating to an acquisition arising from his own skill and exertion, there is no difficulty in affirming, that co-heirs are excluded from participation in that only which a man earned by the labour of his own body.

When this question is proposed, it is answered in the negative; for there is no proof whereby the inference can be established. It may be easily affirmed, that the right of participation extends only to that which has been acquired through the means of property appertaining in common to the brethren; but the acquisition being the act of an undivided brother, is not alone a sufficient cause for vesting property in the rest: the cause is the aid received from the joint stock.

Were it so, might not an elder son, who maintains his infant brothers, after the death of their father, out of his own acquired wealth, claim reimbursement from them when arrived at years of discretion? No; for an elder son is as strictly commanded by the law (XII, &c.,) to support his infant brothers, as to perform his father's obsequies.

Again; if the horse used for riding be neither very excellent nor very bad, and the undivided brother, who gains wealth with that horse, be not greatly nor little skilled, nor totally inexperienced; in that case the rest of the brethren shall have one share each, and the acquirer two; and the phrase cited by JÍMÚTAVÁHANA, ("two shares belong to the acquirer,") relates to this case only: in other instances, a rule of adjustment must be formed in due proportion thereto; for a distribution analogous to that which is ordained by legislators, is just in other cases. By consent of all authors, this rule of decision is only observed in the instance of property acquired by a co-heir before partition. According to CHANDÉSWARA and the rest, the share of wealth gained by learning, which is allotted to a learned co-heir, must be regulated in this mode. As for the distinction assumed on the opinion of JÍMÚTAVÁHANA and others, (who admit, *in some cases*, the participation of a learned co-heir, who did not contribute to the acquisition of wealth, denominated the earning of science, even though it were gained without using the joint stock,) that the proportion must be equable, because no special distribution is ordained, and because it is a maxim, that, "in the silence of the law, equality is presumed:" that is wrong; for it would be an unjust disparity, compared with the allotment of a double share when the joint stock has been used.

CCCLVII.

NÁREDA:— If one parcener, be he ever so ignorant, shall maintain the family of a brother studying science, he shall share the wealth which that brother may gain by his learning.

"Shall maintain" being expressed in the singular number, if another brother support the family of one who studies science, by the expenditure of his own *separate* property, and by the labour of his body, he has a right to a share of the wealth gained by that learning. So JÍMÚTAVÁHANA, with whom RAGHUNANDANA concurs.

"Wealth gained by that learning;" the ignorant brother shall share what may be earned by that science during the study of which he maintained the family of his brother, not wealth gained by any other science. Since "studying" indicates present time, the word being formed by a suffix equivalent to the sign of the present tense, it must be understood that the family is maintained during the same period in which the science is studied. Since present time signifies by acceptation the period of an action from its commencement until the effect be produced, the meaning is, so much time as is necessary from the commencement of the study to its final completion. Accordingly, if some of the acts requisite for the attainment of it be omitted, the man is not said to have learned the science. In like manner, the parcener can only claim a share if he have supported the family from first to last. Since it may be said of a student, "he studies science on such a day within that period," may not a parcener also obtain a share for maintaining the family on that day? In this place, the whole of the acts from the commencement until final completion must be implied: consequently, the ground of participation is the maintenance afforded to the family during the same period, corresponding day by day with that during which the whole of the several acts of reading and studying the science did pass.

"The word being expressed in the singular number, &c.;" then, if two brothers maintain the family by their own labour, and with their separate property, what should follow? They shall receive their due portions of a single share. Both are expressed by a term in the singular number; as the male and female buffalo, or male and female elephant, are denoted by single words. Must not some consequence be necessarily deduced from the use of the term in the singular number? The consequence is, that two shares are not allotted; nor any, if his family were maintained out of the joint stock. Is it not absurd that no share should be allowed when the family is maintained at the common charge, since the ignorant parcener has property in the joint stock? No; for the family of the student has as much right to support from the common estate, as that of the ignorant parcener. It should not be argued, that the student does not personally labour *for the support of his family*, but the other parcener does; and therefore, even though he have not a right to a full share, he may be entitled to half. In a text formerly cited (CIX), "kinsman" is a term used to signify "family and the like;" the text of VRĬHASPATI (XLV) justly allots a greater share on account of good qualities, because they tend to the support of the family; and the precept of NÁREDA (CVIII) directs, that he who is employed for the common benefit, shall be supplied by his brethren with food and vesture: the greater share allotted to him out of the heritage, is the reward of his personal labour. However, if the family of the student be supported by a parcener who acquires wealth by asking funds on the account of his father, although he be destitute of hereditary property, that parcener is entitled to receive some part of the wealth gained by learning.

"Any thing given by a friend" (CCCXLV and CCCLII); received from him through affection; and if any thing have been given to a friend, and he, accepting the present, make a return to the giver, that also is exempt from partition; for the present was not made in expectation of a return. But if such expectation were entertained, then, according to the opinion of CHANDÉSWARA and others, a distribution of the thing received must be admitted; for the term, "given by a friend," signifies on account of friendship: now this was not received from him on account of affection, but on that of a gift made. But when mutual friends present to each

other tokens of regard, he who first makes a present knows that the other will make a return; he who accepts it, reflects, "he has given me this, I will make a return;" is any thing which is so received partible or not? The answer is, the gift was necessary, independent of the expectation that he would make a return; for, had the present been withheld, his friendly regard would have been forfeited: things so received are therefore exempt from partition, even though mutual gifts were presented. But if a man make a present exceeding his means, through mere avarice, on pretence of affection, in the expectation of receiving a greater return, or with intent to defraud his co-heirs, whatever shall be given to him by his friend is partible: common sense supports this inference.

MENU explains wealth received on account of marriage.

CCCLVIII.

MENU:—What is received with a damsel equal in class, at the time of accepting her *in marriage*, let a man consider as wealth received with the maiden: it is deemed pure, and promotes increase *of prosperity:*

2. But let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as vindicating the solemn rite.

"Equal in class;" of the same tribe: this is mentioned for the purity of the wealth so received; even that which is accepted on account of a marriage with a woman inferior in class is exempt from partition. "At the time of taking her *in marriage*:" this is a general instance comprehending any earlier period; for what is then given is pure, exempt from partition, and received on account of the maiden. "Accepted with his bride;" what is bestowed on the bridegroom, *when* conducting her *to his home*, after the celebration of the nuptials. What is given to him by his father-in-law and the rest after the marriage, must be considered as a mark of respect presented to a guest (*mád'huparca.*)

A present (*mád'huparca*) of honey, curds, and butter, in a vessel of zinc, is the honour shown to a guest and the like: what is received with that token of veneration is *mád'huparca*. Consequently, a man should present to a venerable person who comes to his house, an *arghya* (or clean rice and *dúrvá* grass in a vase made of conch, and containing water), a vessel of water to wash his feet, a cow and the like, as directed in the *Mahábhárata;* "let him present a cow and an *arghya*."

In all these cases, it is possible that joint property may be used; for the giver may entertain this expectation, "I will now gratify him *with presents*, hereafter he will honour me *with gifts*." However, if joint property be dissipated by an expense exceeding the law, the giver's means, and general usage, for the sake of a subsequent gain; in no such case is the wealth which is gained exempt from participation. But if the expense conform to the law, to the donor's means, and to usage, the wealth received by him is indivisible, according to CHANDÉSWARA and the rest, even though joint property have been used; *but*, according to JÍMÚTAVÁHANA and others, it is partible.

He who with the assent of the other sharers recovers what had descended from his father and paternal grandfather, and had been forcibly taken by

others, shall not give it up to the rest of the co-heirs. Thus RAGHUNANDANA, commenting on the text of YÁJNYAWALCYA (CCCLII 2). The ground on which their consent is here required, is an expression used by the author of the *Mitácshara;* "*what he thus recovers for his sole benefit*, with the acquiescence of other sharers." But that is not approved by CHANDÉSWARA and the rest: they hold, that the assent of co-heirs is not requisite, since no words of such import occur *in the text*.

If five undivided brothers intend to recover a chattel which had belonged to their grandfather, but has been seized by a stranger, and was not recovered by their father by reason of his inability, and they wait an opportunity, remembering the words *of the poet*, "Manliness succeeds, O king! in due season, by the power of destiny;" in the meantime, one very cunning parcener resolutely attempts the recovery, and, through the influence of his good fortune, the end is accomplished: that the thing recovered should in such a case be exempt from partition, is an absurdity objected to the opinion of CHANDÉSWARA and the rest. However, we hold it reasonable, that silent neglect on the part of the other brothers should be deemed requisite *to the forfeiture of their right of participation*. But, in this case it is held by the *Mitácshará*, RAGHUNANDANA and the rest, that the property shall be distributed *among the co-heirs*, if it have not been silently neglected *by them*. Still it appears, according to this opinion, that the partition shall be made, after giving a fourth part to him who recovered the property. The allotment of a quarter is directed by the text of SANC'HA, in the case of land: this is remarked in the works of RAGHUNANDANA and JÍMÚTAVÁHANA, where it is said "SANC'HA propounds a distinction in respect of land."

CCCLIX.

SANC'HA:—But land which had formerly been lost, and which a single heir shall recover by his own exertion, his co-heirs may divide according to their allotments, having first given him a fourth part of it.

By premising that he propounds a distinction in respect of land, it is intimated, that a fourth part shall be allotted in the case of real property, the recovery of which had been neglected. A fourth part of so much land as is recovered, for instance, a hundred cubits out of four hundred, shall be taken by him who recovered it: those who did not co-operate therein, whether five, seven, or ten brothers, shall take *the remainder* of the land, measuring three hundred cubits *in the instance above mentioned*. This appears to be the rule of adjustment, from the terms of the text, "the other co-heirs." But this might be an unjust disparity; for if one of two brothers regain property, and the other contribute not thereto, he who did not co-operate would have three-quarters, and he who actually recovered the property, one-quarter only. The term "other co-heirs" is therefore indeterminate; or it may be definite, as it relates to their making a distribution; not to their *exclusive* receipt of shares. Consequently, they shall divide *the residue* according to the number of brothers, including him who effected the recovery.* Or the words may signify, "the other co-heirs also may divide the land;" and the number of shares would consequently be one more than four times the number of brothers; out of which, he who regained

* This seems the most equitable; the acquirer has a fourth of the whole, and his regular share of the remaining three-fourths. T.

the property shall take five shares, and the rest four each: a fourth part therefore signifies the quarter of a full share. It must be acknowledged, that if the co-heirs be numerous, he who effected the recovery ought to receive less than if they were few; in like manner as in the case of property acquired by himself with supplies out of the estate. If two brothers regain the property, they shall take one-fourth part to be shared between them; for it would be unreasonable that they should receive a greater allotment, since the recovery was a single act done by both.

Admitting this in the case of land recovered, still there is no proof that he who effects the recovery shall receive a fourth part of gems, or the like, when no neglect is *imputable to the other co-heirs*. This should not be affirmed; for he who regains the property must have the reward of his labour. It should not be asked whence the allotment of a fourth part is deduced. The rule established in the instance of land must be extended to the present case, because it is a maxim that the principles of law are to be applied uniformly in all consentaneous cases. Nor should it be asked, why may not the rule of allotting a double share, which is established in the case of an original acquisition made without using the joint property, be applied to this? The labour requisite to remove a defect in a thing already done, is light in comparison with the labour necessary to effect a thing not yet done. But if he successfully attempt the recovery of the property, against the warning of the other co-heirs to wait a fitter opportunity, he shall not receive a fourth part, *but his simple share of the general distribution:* such is the inference of common sense.

This text of SANC'HA (CCCLIX), cited in the *Mitácsharà*, is unnoticed by CHANDÉSWARA, because it has been omitted in the *Smriti-mahárnava*, *Cámadhénu*, *Calpateru*, *Párijáta*, and other works. It has been noticed by RAGHUNANDANA and JÍMÚTAVÁHANA, because it is found in the *Mitácsharà*.

But others hold, that, even admitting the authority of this text, land is there an instance of a general meaning; and *the precept* relates to the case where the co-heirs had not silently neglected the assertion *of their claim;* but if they neglected it, the property recovered by a single co-heir is not partible, even though it be land.

"Wealth acquired by learning," in the text of VYÁSA (CCCXLVI), signifies the acquisition of science; and that, as abovementioned, is wealth gained, without using the joint property, by learning attained after maintenance provided by one of a different family, and so forth. Such is the interpretation of JÍMÚTAVÁHANA and the rest. According to CHANDÉSWARA, and others, it is wealth gained by science attained after a maintenance provided by a stranger, a prize having been offered by some third person for the proof of superior learning, whether supplies be or be not received out of the common estate during the acquisition. The following text explains the earnings of valour:—

CCCLX.

MENU:—When favour is shown by a leader, pleased with a gallant action which a soldier performs, well knowing his danger:

2. Whatever is then received *as a reward* shall be *considered as wealth* gained by valour: *that*, and what is taken under a standard, are declared not to be partible:

3. What is taken in war, after routing the force of the enemy, by a a soldier who risked his life in the service of his master, is named *spoil* taken under a standard.

These texts are again cited *in this place* to subjoin the explanation of the sense.* "Well knowing his danger;" aware of the risk to *which he exposes* his life. "Gallant," with resolution. "Action;" the service desired by his master, such as the slaughter or discomfiture of the enemy, and the like. Does not war universally cause risk of life? *The answer is, service, in* the presence of a powerful foe, is intimated by the mention of danger. "When favour is shown by a leader, pleased with such an action, &c.;" consequently, wealth received by *the* favour *of the chief* is alone described by this text as the earnings of courage. "And what is taken under a standard;" the particle connects this with the acquisition of valour before mentioned, which is thus declared not to be partible. "By a soldier who exposed his life in the service of his master;" who disregards the risk of his life in comparison with the service of his employer. Hence, what is plundered from the army of the foe, having routed the hostile force after a tremendous conflict, is spoil taken under a standard. Both these are technical terms for certain *descriptions of* wealth. According to CHANDÉSWARA and others, they are not partible, even though joint property had been expended before battle, for the purpose of obtaining favour from the chief. In either case, no partition can be *claimed*, even though a horse or the like, appertaining to the co-heirs, contributed *to the acquisition*. In the case of skill with the bow and the like, a share must be given to a parcener no less skilful, as in the case of agriculture, to *such* a husbandman; for, though expert, he has no superiority *over another skilful co-heir* in capacity for an act of dexterity. But, according to JÍMÚTAVÁHANA and the rest, this is intended as an example: if the joint property be used, wealth acquired by these means is partible.

The term *(saudáyica)*, which occurs in the text of VYÁSA (CCCXLVI), signifies what is received from a father or other (*sudáya*) affectionate kinsman. So NÁREDA (CCCLIII†), and VYÁSA (CCCLIV). Property received at the time of accepting a bride, is "wealth given by the kinsmen of a wife" (CCCLIII 1); for this coincides with the text of BHARADWÁJA, "and that which was received with a bride." The apposition is not in that form which is called *tatpurusha* of the sixth case, and which would exhibit, as the sense of the compound, "property of the wife;" for it could not be supposed that brothers can claim partition of wealth which belongs exclusively to a woman. Such is the opinion of authors.

"A mother has also power *over her own*" (CCCLIII 2); this regards female property. Thus the *Retnácara*. It may also relate to an estate left by the paternal grandfather, and which had devolved on his daughter *by the failure of male heirs;* for she alone is then proprietor of that wealth: although her gift *or other alienation of such property* be forbidden, as will be mentioned under *the head of* Succession to the estate of a man who

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* I prefer inserting them here, and have therefore omitted the former quotation. T.

† Both verses were cited in this place; I have inserted them in the place where the first verse was quoted. T.

leaves no male issue, what is given *by her* to her son, on account of his *filial* piety or the like, is *a* valid *gift*. But although the wife have an interest in the wealth of her husband during his life, under the text which declares property common to the married pair (CCCCXV), his wealth given away by her is not *a* valid *donation;* for she has not at that time independent power over his estate.

The dependence of a woman whose husband is living, even in respect of property inherited from her father, who left no male issue, is only suggested by the text of MENU (Book II, Chap. IV, v. 56); it will be mentioned, that women are independent in respect of female property only: as the wealth of her living husband is declared by the text of the legislator to belong to both, does not that which is gained by the wife in right of birth, or through personal labour, equally belong to both? VÁCHESPATI BHATTÁCHÁRYA does not acknowledge the right of the husband in the property of his wife during her existence, nor her's in her husband's property during his life: for the text relates to another subject, namely, to *wealth* given away. But those who admit both, affirm the right of the husband, controlled by his wife, in that which is acquired by her; and the right of the wife, controlled by her husband, in his wealth; and they also affirm her subjection to him in respect of her person and so forth: hence they say, any thing given away by her, without the assent of her lord, is not *a* valid *gift*. But others assert, that it is valid, like *disbursements made by a wife for* the service of guests and the rest. It should not, *they think*, be argued, that her husband has given a general sanction to *her disbursements for* the service of guests or similar purposes, and therefore the expenditure is legal: but, in this case, since assent is wanting, how can the gift be valid? It is the general practice to do so, *say these lawyers*, even though assent be wanting. That *inference* does not seem consistent with the law; but, if her husband did assent, any thing given by her through favour is indisputably a valid donation: in this case, however, the tacit assent of her lord must then only be inferred, when the father, subsequently informed of a gift made *to his son* by his wife unathorized by him, expresses no disapprobation, but *on the contrary* says, "let her do as she pleases." Both in this case and in that of wealth given by the father, it should be remarked, that any gift made or approved by him, under the influence of lust or wrath, is not valid; *but*, any donation made or confirmed by him through tenderness, with due consideration of good qualities, and of religious duty or the like, is good in law.

As for what *some* deduce from the use of the word 'father,' and other terms expressing relation, that what has been given by any other person is partible, (namely, what is received from any other except the father and the rest, without using the joint estate;) that has been already disproved: but, this *text* using the word father, which denotes relation, is an answer to one who entertains a doubt, "may I not share the wealth given to thee by our parent (or other relative), since it is the wealth of my father (or other kinsman)?" Hence it is said in the text of VYÁSA, "that shall not be claimed by co-heirs" (CCCLIV).

If the same thing, already given to one son, be given a second time to another, he to whom it was first given shall alone take it; under the text of YÁJNYAWALCYA "in the case of a pledge, a gift, or a sale, the prior contract shall prevail" (Book II, Ch. II, v. 28.) RAGHUNANDANA.

CCCLXI.

MENU:—After the death of the father, if the eldest brother acquire wealth *by his own efforts, before partition*, a share of that *acquisition* shall go to the younger brothers, if they have made a due progress in learning.

As for this text of MENU, the meaning is, since they are placed *in a relation* similar to *that of* father and son, by a former text (XII), the youngest brother has a claim on the wealth of the eldest, even though acquired without the use of the patrimony, as *he has* on the wealth gained by his father: in respect of this, a distinction is propounded by the text; even unlearned brothers have a right to wealth acquired by their father; but learned co-heirs only have a claim to that which is gained by the eldest brother: and this is demonstrated; for the terms of the text ("after the death of the father," "the eldest brother," "the younger brothers," "if they have made a due progress in learning," and so forth,) would *otherwise* be unmeaning. Such are the very words of JÍMÚTAVÁHANA. This relates to wealth not acquired by learning; for, property gained through science, by a younger brother, during the life of his father, must be also shared with an elder one who has made a due progress in learning. But, in the present instance, no discrimination of equal or less attainments in science is made by the legislator.

At this time, since an elder and younger brother do not now behave as father and son, it appears that this rule should not be observed. On this subject JÍMÚTAVÁHANA remarks, that partition of any thing received in donation without having used joint property, as it is now practised among good men, is not without some foundation in brotherly affection and human wisdom: or, if another ground of the present practice be *affirmed*, (*namely*, that *co-heirs*, seeing wealth which had been received in donation distributed, because it was the acquisition of science, and because partition among brothers, equally or pre-eminently learned, is ordained in the case of wealth earned by knowledge, even without the use of joint property; and not knowing that this partition of effects so gained was specially made on account of learning, but erroneously supposing it made *merely* because the wealth was acquired before partition; have themselves introduced this practice:) still there is nothing groundless. It is his opinion, that partition made solely because the wealth was acquired by an undivided parcener, is founded either on affection, on human *institutions*, or on *habitual* error.

SANC'HA and LIC'HITA propound other things not subject to partition:

CCCLXII.

SANC'HA and LIC'HITA:—There is no division of a house or garden *made by one son for himself*, nor of water-pots, ornaments, utensils *for food and the like*, nor of concubines or clothes, nor of water *in pools or wells*, nor of pasture ground and roads: so *said* the lord of created beings.

The place of abode; "the house." Consequently, if five brothers, during the life of their father, sleep, eat, and so forth, in five separate and distinct houses; in that case, when partition is made after the death of the

father, each shall retain his own apartment; lots shall not be cast *for those habitations.* But if there be not five houses, then only shall they make a distribution; and, after allotting the former dwellings in the order of seniority, other houses ought to be built *for the younger brothers:* but, if the disparity be excessive, an actual partition must be made. This is *consistent with* common sense.

Of waterpots or metallic vessels for water, personal ornaments, utensils, (literally what is adapted for use, or what is employed,) of concubines or clothes applied to the use of one parcener, it appears that there shall be no division. The *Retnácara.*

The term used in the gloss *(lauha)*, signifies any metallic vessel; for it is so explained in the dictionary of AMERA. Consequently, each parcener shall now take that waterpot which he used during the life of his father: lots shall not be cast for it. This *takes place* if each individual be provided with vessels, and if the disparity be not excessive. Such is the reason of the law, and the *subsisting* practice.

"Ornaments;" not such as have been given through favour, but such as were worn by each. Here again excessive disparity must be avoided. But, if any ornaments remain in the treasury, and are sometimes worn by any one parcener during festivals, such ornaments shall be shared even by him who did not wear them; for it is not understood that these belong exclusively to him who occasionally uses them. It is the same in the case of clothes. But since partition could only have been supposed on the day when the parcener first began to wear them, with the assent of the father, of the elder brother, or of the spiritual counsellor, expressed in these words, "let him wear this apparel or these ornaments," therefore the clothes and the jewels belong exclusively to that *parcener who habitually uses them.*

"Nor of water *in pools or wells,* nor of pasture ground and roads;" the whole phrase, *according to one reading* (*apám prachárárt'ha*)*;* may signify the channel for the issue of water, and which is called a drain. RAGHUNANDANA reads *apám prachára rat'hyánám; rat'hyá* signifies a road, the way by which men and cattle pass *and repass.* If the channels for the passage of water can be formed in separate places, a division is unexceptionable. It is not declared necessary that the water should run by the former drain, through the court belonging to any one brother: but if all the parceners point out that channel, *it must remain in common.* Such *is the inference of* common sense.

CCCLXIII.

MENU and VISHNU:—Apparel, carriages, or riding horses, and ornaments *of ordinary value, which any of the heirs had used by consent before partition,* dressed rice, water *in a well or cistern,* female slaves, family priests, or spiritual counsellors, and pasture ground for cattle, the wise have declared indivisible, *and still to be used as before.*

"Apparel;" clothes for personal use. JÍMÚTAVÁHANA.

"Carriages;" the term (*patra*) is expounded by CHANDÉSWARA property recorded in a writing; for that coincides with the text of CÁTYÁYANA (CCCLXV 1). The meaning is, property recorded in a written statement of his own affairs, by the father or other predecessor, *in this form,* "so much

given to such a one." HELÁYUDHA, the author of the *Pracáśa*, JÍMÚTAVÁHANA and others expound it, a horse or other animal used for carriage. AMERA explains the word *patra* "carriage or conveyance, leaf, feather, arrow."

"Dressed rice;" JÍMÚTAVÁHANA expounds the term (*critanna*) sweetmeats or the like; the *Retnácara* explains it flour or similar things; the *Párijáta* expounds it rice or other food. In fact, all these interpretations should be admitted; for all may be comprehended under the term "and the like." Consequently whatever has been provided by a father for the food of his own son or daughter, or other relative, is exempt from participation.

"Water;" except that which is contained in a pond or well; running water. Thus JÍMÚTAVÁHANA. But, in fact, no partition is made of a single well or the like; for VRĬHASPATI propounds another mode of participation therein. It shall not be divided like other things; such is the meaning of MENU and VISHNU. In like manner, his own property, recorded in an inventory as abovementioned, shall not be divided. Some explain "water," vessels used therefore, as mentioned by SANC'HA and LIC'HITA (CCCLXII).

"Female slaves" employed by one parcener. Thus the *Retnácara*. Consequently, the parcener who employs a female slave shall retain her. This rule is observed when the slaves are numerous, and the employment continual. It is founded on the coincidence of the text of GÓTAMA (CCCLXVII). The term used (*sambhóga*) *here* signifies employment, such as rubbing his limbs or the like. The word which occurs in the text (*striyah*), may signify "women other than female slaves."

The subsequent terms (*yógacshéma prachára*) are explained by JÍMÚTAVÁHANA, the bed and vessels used in eating, drinking, and so forth. In the *Retnácara* the same words are explained family priests, or spiritual counsellors, and the road by which cattle pass. According to this interpretation, one term must be read with a final M (*yógacshémam*). Or the apposition may be in the form called *carmad'háraya*, instanced in the expression 'king fond of pot-herbs;' "the path together with the family priests." The same term is explained in the *pracáśa*, hereditary livelihood in the king's family or the like; that is, performance of sacrifice, service in war, the sale of cow-tails and similar articles *for the king's use*, menial service, and so forth. It is customary to distribute the privilege of sacrificing *for the king* and the rest, by regulating the periods *of separate enjoyment, such as* a month each, or the like. HELÁYUDHA subdivides the term; a boat or similar conveyance (*yóga*), and a fort or other place of safety (*cshéma*). All these things, mentioned by various authors, are in certain instances exempt from partition.

CCCLXIV.

VYÁSA:—A place of abode, vehicles, prepared grain, water, and women, shall not be divided; nor a place of sacrifice, *nor an idol*, even though it had been transmitted from father to son for a thousand generations.

"A place of abode;" *literally* a field: the house and garden. Thus CHANDÉSWARA. Others expound "field," a piece of ground which is the common site of habitations. "A place of sacrifice;" the spot where religious rites are performed. So JÍMÚTAVÁHANA. Sacrifice signifies the worship of deities.

CCCLXV.

CÁTYÁYANA:—Property recorded in a written document, and that which has been appropriated to religious uses, water, wives, and a corrody which has descended from ancestors.

2. Clothes *of great value* kept in the treasury, ornaments, and whatever is naturally indivisible, shall be used alternately by the kinsmen during periods assigned to each.

3. Pasture ground for kine, a common way, apparel, and whatever else is worn on the body, necessary implements of learning, *as books and the like used severally*, or of arts, *as pencils or tools*, are indivisible, according to VRĬHASPATI, *but if no other property remain, must be sold, and the price of them must be distributed.*

4. But BHRĬGU declared, that whatever customary law of a country, a class or tribe, a company *of merchants and the like*, or of a town, should be alleged and proved, the distribution of an inheritance must respectively be made according to that custom.

"Property recorded in a written document;" wealth given away or promised to any one on a religious consideration. Or property recorded in a written document, (that is, a debt,) which was lent for religious purposes, is not partible. "Water;" jars used in the worship of deities. Thus the *Retnácara*. "A corrody;" a pension which is assigned (*nibadhyaté*) by the king, on a mine or the like, (that is, a pension which is fixed as it were by words, or which is made irrevocable,) is a corrody (*nibandha*): the suffix bears the passive sense, Or the same inflection may bear a neuter sense; thus, "ten certain things shall be received by you from this mine for such a space of time," and so forth.* In like manner, the rights of *Bráhmanas*, who attend at funerals,† and similar privileges, must be considered as corrodies. The immunities of a *Bráhmana*, who burns dead bodies, and other similar rites, are in a manner fixed in perpetuity: but there is this difference, that he receives his dues as the reward of his trouble. "Descended from ancestors," is merely illustrative; for the reasoning is equally applicable to what has not been inherited.

"Clothes kept *in the treasury*;" and bearing a great value.

The *Retnácara*.

"What is naturally indivisible;" what is incapable of division, as a tree or the like. These things above mentioned are declared exempt from partition, because an actual division is almost impracticable. For a corrody, or the *future* receipt of ten certain things or the like, or the promise thereof, cannot be disparted; it is therefore pronounced indivisible: but the ten things received as the produce of it shall be distributed, as will be mentioned.

"Pasture ground for kine" (CCCLXV 3); the path of cattle.‡ "A common way:" a road used by men and women. Such is the difference.

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* The explanation exhibits no neuter sense. T. † *Agrahárica*. See Book II, Chap. iii, S. 2. T.

‡ The word *prachára* also signifies pasture ground: I follow Sir William Jones in so translating it. T.

"Apparel" of small value, and whatever else is worn on the body. Thus the *Retnácara*. There is consequently no vain repetition. The meaning is this: whatever apparel is used by any one parcener, that vesture worn on the body shall be taken by him alone; lots shall not be cast. But apparel of great value, adapted for attendance at the royal court, must remain in common; for if it were taken by one parcener, the rest would be prevented from repairing *occasionally* to the royal residence. But if there be much *valuable apparel*, partition is unexceptionable. After selling or otherwise disposing of unworn clothes, they may be re-purchased, or otherwise regained, by paying the value out of several property: on this consideration, the legislator has added "worn" (CCCLXVI). Others expound the term (*dhritam*) kept in the treasury. It is indivisible; partition will be of course forbidden, *because it cannot be disparted:* but what is worn on the body shall not be *even* shared, by selling it, and dividing the price: to intimate this, say these lawyers, apparel is again mentioned.

"Necessary implements of learning;" the term (*prayójya*) is explained by HELÁYUDHA, a loan advanced; a sum necessary to be invested in traffic or the like. For instance, a hundred pieces of money being appropriated to the commerce of a merchant, traffic is conducted on that capital in a remote province, by means of navigation; if that be divided among his sons, suppose ten brothers, no one of them can *afterwards* carry on a similar trade: some lawyers so explain *the precept*. The same term is expounded, things required for use, as books or the like; these shall not be shared by ignorant co-heirs, whether to sell or merely to use them: it is so affirmed in the *Párijáta*, the *Retnácara*, the treatise of JÍMÚTAVÁHANA, the *Dáyatatwa*, and other works.

"Necessary implements of arts;" as pencils and the like. Thus the *Retnácara*. But HELÁYUD'HA explains the word "arts" as signifying means of subsistence in general; books, pencils, and tools, required for that purpose, must therefore be comprehended by this term.

CCCLXVI.

VRĬHASPATI:—They by whom it is affirmed that clothes and the like are indivisible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided;

2. Property held in common *would be* unemployed, for it cannot be given to one *in exclusion of another*: therefore it must be divided by *some mode deduced from* reasoning; else it would be useless.

3. By the sale of clothes and ornaments; on the recovery of a written debt; by compensating the dressed food with *an equal allotment of* undressed grain; an *equitable* partition is made:

4. Water drawn from a *single* well or pool shall be taken by turns; a bridge and a field shall be shared *by co-heirs* in due proportion:

5. Let a *single* female slave be successively employed by co-heirs in their respective houses, according to their several shares; if numerous, the slaves shall be distributed in equal allotments: such is the law in respect of female servants:

6. The benefit received from family priests, or spiritual counsellors, shall be equally shared; and the pasture ground for cattle shall be used by the co-heirs in proportion to their allotments.

From this text of VRĬHASPATI it appears, that the indivisibility of clothes and the like is founded on the letter of revealed law, not inferred from its sense. The same may be affirmed to be the import of the precepts of legislators. Thus, partition of clothes and the rest, if casually made, cannot be imputed as a fault. "*It is not proved, that* the collected wealth of opulent men (the vehicles, ornaments, houses, and other property of those who have many dwellings, many carriages, and so forth,) is indivisible." This word is brought forward with the *necessary* alteration of gender and number. Consequently the houses, ornaments, and the like, must be distributed by an *actual* partition, or by selling them and dividing the price. Such is the sense of the text.

"Property held in common would be unemployed;" it would be unused: a single chattel, appertaining to two persons, would not be put to use; neither of them could employ it: *for* it cannot be given exclusively to one, since another is part owner of it. Therefore must it be divided by *some mode deduced from* reasoning; else (if a rational distribution be not established) it would be useless; *for* it could not be employed by any one. An argument is here deduced from the absurdity of the converse proposition.

In the text of CÁTYÁYANA (CCCLXV), property recorded in a written document, (that is, a debt,) is pronounced indivisible; and so are clothes, ornaments, and the like. But apparel and the rest may be sold, and the price of them distributed; and a debt, when recovered from the debtor, shall be shared. That partition of dressed grain shall not be claimed, is declared by MENU, VISHNU, and VYÁSA: but if all the co-heirs have not *received* prepared food, but one alone *have*, an equal share of undressed grain shall be given *to the rest*. If there be but one well, or one pool, a distribution by partition of the water and the like must be admitted; and a dyke shall not be made in the middle of the pool. "By turns;" if the pond contain little water, and all the wants of all the co-heirs cannot be supplied, let them each draw ten or five jars of water; and, fetching further supplies from other places, satisfy their other wants: and this must be done with consideration. A field is pronounced individisible by VYÁSA, because the section of it is literally impossible; but, although it cannot be cut, it may be parted by a ridge: therefore does the legislator add, "a field shall be shared in due proportion" (CCCLXVI 4), and that in the case of a single field uniform in its fertile quality; but if there be many such, there is no necessity for parting one by a ridge. The partition of a garden, and of houses, shall be similar to that of a field. A single female slave may be shared: the mode of distribution, proportionate to their respective allotments, is by a computation of labour; for instance, 'let this female slave sweep all their houses, prepare food to be eaten by all, and make all their beds;' here it is evident there can be no disparity: or by a computation of time; for instance, she must work in each house one watch every day, or five or six days in every month, and so forth. If they be numerous, one or two female slaves shall be allotted to each co-heir. In this case, the rule propounded by GÓTAMA must be observed.

CCCLXVII.

GÓTAMA :—A female slave shall belong exclusively to that parcener by whom she is possessed.

But if many be possessed by one parcener, and none by another, the number must be made equal. No dispute should be excited for any small difference in age, strength, and good qualities. Such is GÓTAMA's opinion. This must be considered as the settled rule respecting female slaves (CCCLXVI 5).

Of counsellors and family priests, or (according to the variance of opinions on the sense of the words *yóga cshéma*) of the hereditary livelihood, or of a boat and fort or the like, or of vessels for eating and drinking and the rest, an equal distribution shall be made; that is, by equal numbers *allotted to each*. Consequently, that which is severally adapted to the business of each, shall be taken by him: but in case of inequality of number, or great disparity, some compensation must be given to another *parcener;* the distribution shall not be made by casting lots. Hence, this does not contradict MENU and the rest.

CHANDÉSWARA observes, that valuable clothes and the like are pronounced naturally indivisible; hence, the indivisibility propounded by MENU and the rest, which forbids the literal division of apparel of ordinary value, must be considered as relating to partition in any other form except that which is directed in the case of valuable apparel. There is no discrepance.

Consequently, other Sages have pronounced these things indivisible, on a consideration of the revealed maxim which shows their indivisibility: but the legislator, having mentioned the absurd consequence of a general denial of partition (CCCLXVI 2), establishes the inference that a distribution shall not be made by actually disparting the things, and regulates a virtual partition to be deduced from that revealed maxim. Such is the meaning of the gloss.

But the author of the *Pracásá* thus expounds the text: it is not proved by them that the scriptural precept, "divide not clothes," relates to vesture of ordinary value. "The property of opulent men;" that is, such things as can only be taken by opulent persons, *namely*, goods bearing a high price, must be divided *in a mode deducible* from reasoning; because they cannot be yielded to one parcener. But things of ordinary value may be given up, for they are *mere* chaff. Consequently the precept, "divide not a vehicle, or beast used for a carriage," relates to an elephant, horse or the like. Such is VRĬHASPATI's meaning. But if the elephant or horse be single *in its kind*, a mode of distribution is propounded; by sale, &c." (CCCLXVI 3).

Others consider the text of VRĬHASPATI as an instance exhibited. The phrase, "must be divided by *some mode deduced from* reasoning," is merely an illustration. Consequently, if there be reason to apprehend the destruction of the thing, should an *actual* division be made, then the scriptural maxim bears that no such partition shall be made: but if that apprehension be not entertained, as in the case of an ingot of gold or the like, then an actual division shall be made by the universal consent of legislators. *If it be alleged, that* partition, in the case of numerous *elephants, horses, or* vehicles,

is propounded by no legislator, in consequence of the scriptural maxim "divide not a vehicle," that is affirmed grossly without *due* inquiry. Hence there is no disparagement to MENU and the rest; but otherwise they might be supposed to be disgraced by an assertion deficient in just reasoning. Consequently there is no harm in making a partition when the number *of similar things* is great. Even a single chattel must be shared by sale *and distribution of the price*, or by regulating the periods of enjoyment. It is not meant that female slaves and the rest may not be sold, nor that apparel and the like may not be used *by turns* at regulated periods, nor that a debt shall only be divided when recovered from the debtor: accordingly, although it may not be immediately recoverable, it is the practice to distribute such claims by figures. Of clothes, inconsiderable in value, and worn *by one parcener*, a partition may be made, as *in the case* of dressed grain, *by giving an equivalent to the rest*. Valuable apparel may be divided, by selling it, *and distributing the price*.

According to JÍMÚTAVÁHANA, "women," in the text of MENU (CCCLXIII), signifies 'women other than female slaves.' He conceives that MENU, VISHNU, and VYÁSA, deny the partibility, which might be supposed, because wives separately obtained in marriage are gained at the expense of the joint estate. It should be here remarked, that of wives there is no partition even by equity, *or in the mode deduced from reasoning;* for a woman, however obtained, is declared by MENU (CCLII 4) to belong exclusively to her husband. It should not be argued, that, like dressed grain, the share shall be made good by providing another damsel *for the co-heir*. Although joint property may have been used, a share need not be made good; for joint property *in a wife* is not acknowledged. For that sole reason, women are pronounced indivisible. In fact, female slaves only are denoted in a strict sense by that term, for partition by equity is propounded by VRÍHASPATI for them only; but of wives a partition could not even be supposed, since they are not common to the co-heirs.

Consequently, when a father or other predecessor dies, a right vests in all the heirs, as is acknowledged by RAGHUNANDANA, over all which belonged to him, gold and silver ingots, female slaves, kine, and the like; for the cause is uniform. Hence, since it might be supposed that every thing shall be disparted, therefore legislators have forbidden the division of certain effects ; and VRÍHASPATI has directed a distribution, by allotting one entire thing to one parcener, and another entire thing to another parcener, and so forth, if the *similar* effects be numerous; and by regulating the periods of alternate enjoyment, or by sale or otherwise if the chattel be single. After disparting an ingot of gold, or the like, the former right being devested, the property of the several portions vests in each brother by the help of lots cast, or by other means; for the integrant parts of the thing which belonged to the father, or other predecessor, *are separated* like *the fragments of* a broken jar or the like. It should not be objected, that such is not the sense of the law; but the meaning is, that a thing shall not be disparted, when partition can be made by distributing an equal number of such things *to each parcener;* in proof of which the existing practice is alleged. Were it so, there would be an impropriety in VRÍHASPATI mentioning the equal distribution of numerous female slaves, when he is treating of partition by the equity *of the precept*. But the practice is current even in the case of gold and silver ingots, because partition, without breach *of an integral*, is

observed in the case of gold and silver coins, apparel, kine, buffaloes, and the like. Nor should it be objected, that, if the act of disparting alone constitute partition in a legal sense, cattle and the like must be dissevered, since no legislator has pronounced them indivisible. They are declared so by CÁTYÁYANA, "whatever is naturally indivisible" (CCCLXV 2). But, here, any thing which cannot be literally divided must be distributed by *the* equity *of the precept;* and in the instance of those things, of which partition is separately denied, such as a female slave, a water-pot, or the like, solely enjoyed by one parcener, compensation is made by an equivalent. In the case of books and similar things required for use, all may claim the benefit of them, although they remain in common. In such a case, if one of five brothers be illiterate, he obtains no share of the books: but his son, if learned, may claim the use of them; if he be also illiterate, he obtains no participation.

Should five or seven generations pass thus, and afterwards one *descendant* become learned, shall he obtain his share or not? Although they be called indivisible, still a right devolves on him, since the books were *successively* the property of all his ancestors. It should not be objected, that the right stops with the fourth in descent, under the text of DÉVALA (LXXXI). For it may be reconciled by considering it as relating solely to that property which is not pronounced indivisible; else, if all the brothers and all their descendants be illiterate, these books would become a waif after the fourth generation. If the right of property subsist in one case, although the thing be indivisible, it subsists equally in the present instance. In this manner, if the eighth in descent be able to use the books, they would be refused by the rest through knavery, or because the library is in their possession. There are not consequently any means of preventing illegal acts.

Again; if a learned co-heir, taking a book which cannot be possessed by the illiterate parcener, sell it, what is the rule in that case? Some thus reconcile *this seeming difficulty:* if the books have not been used through four generations, there can be no subsequent claim, as appears from the text *above cited* (LXXXI). If the learned parcener sell it *earlier*, the co-heir is entitled to receive his share; for the books and the rest are alone pronounced indivisible, not their price. But others hold, that property is only devested by silent neglect through four generations, not without neglect; else a thing bailed to any other person, and not enjoyed by one of the parceners during four gradations, would become a waif; consequently their property subsists through successive generations. Having no occasion for its use, the owner does not keep a thing in his possession; but he should bail it, previously taking an attested writing. At present, from apprehension of fraud, even books and the like are brought into partition; but that is not deemed legal in the *Párijáta*, *Retnácara*, *Dáyatatwa*, and other works.

In the present instance, the form of a distribution by the equity of the law is this: after making a written *catalogue*, the books should be distributed in the respective houses of all the co-heirs; the whole library should not be placed in the house of one of the parceners. In fact, the work of carpenters and other artisans would be impeded, if no partition could be made of the axes, hammers, and other tools; but if they be distributed without giving any share to one who is ignorant of the art, his son could not *afterwards*

obtain his allotment: the skilful brothers should therefore divide the tools, and follow the profession; but if the son of an undeserving brother afterwards become skilful *in that profession*, he may claim a fresh partition. If any tool have been spoiled or destroyed by use, let that be relinquished, and the remainder shared with the son of the undeserving co-heir. But should these brothers, who are skilled in their art as carpenters, sell any tool, they must, when the sale is afterwards discovered, give a share of the price; but they are not in this case liable to a fine.

According to HELÁYUDHA, books and the like are subject to partition; for he does not enumerate them among indivisible things, but explains the term (*prayójya*) as signifying a loan *advanced*. This opinion seems accurate; for VRĬHASPATI has not noticed the equitable distribution of books and the rest. But it would be indecorous to contradict the *uniform* assertions of many authors, *from* CHANDÉSWARA and the rest, down to the modern learned descendants of learned ancestors. For this reason has the subject been here noticed. Lawyers thus describe things not partible.

CHAP. VI.

ON PARTIBLE PROPERTY.

SECT. I.—*On the Partible Residue after the payment of Joint Debts.*

AFTER excepting this, *which has been mentioned in the preceding chapter, all other property is* partible.

CCCLXVIII.

CÁTYÁYANA:—On a partition by co-heirs, all the wealth left by their father, or by his father, and what they themselves have acquired *by their joint efforts,* shall be divided among them.

Wealth left by their paternal grandfather; property which has descended from that ancestor through the father; or, in certain instances, passing by him, *and devolving immediately on the son:* this intends generally all wealth which has descended from ancestors. "Paternal estate;" gained by the father himself. "What they themselves have acquired:" self is here employed in the plural sense; consequently, what is gained by the co-heirs, through agriculture or the like, *is here meant.* So MENU, *in a text formerly cited* (LXXIII), *directs, that* there shall be an equal division without any allotment in right of primogeniture. From the mention of "unlearned" in this place (LXXIII), some argue, that if any one of them be learned, a greater portion shall be allotted to him on account of his good qualities. But that is not right; for, when a greater allotment, in right of seniority by birth, is disapproved, how should a larger portion be allotted in right of pre-eminent learning? This *seeming difficulty* must therefore be thus reconciled, in conformity with the opinions of CHANDÉSWARA and the rest: if one of five brothers acquire wealth by agriculture and the like, another by commerce or similar means, some by learning, valour, and so forth, with supplies from the joint estate; in that case, the learned co-heirs share the wealth which is gained by agriculture or the like, but the illiterate parceners have no share of what is technically called the acquisition of science: therefore it is said, "being unlearned" (LXXIII). Accordingly it is observed by CHANDÉSWARA, on the text of GÓTAMA, that "unlearned" signifies destitute of that science which renders wealth several and appropriate. But that text of GÓTAMA may be *explained* as intended to forbid the allotment in right of primogeniture. At present, if all the co-heirs, being destitute of learning, acquire wealth, jointly or severally, by agriculture or the like, since all would be entitled as acquirers to double allotments, equal partition is therefore proper, and the greater or less *share in the* acquisition should not be investigated: as is remarked by CHANDÉSWARA, 'if all the 'brothers, being unlearned, acquire wealth by agriculture or similar means, 'then an equal partition shall be made of that property which was not the 'wealth of their father; much being accumulated by one, it shall not be set

'apart in the form of a deducted allotment, or the like.' The same should be understood in respect of *all* undivided co-heirs, even though joint property have not been used.

But, according to the opinion of JÍMÚTAVÁHANA and the rest, co-heirs not inferior in learning have a right to participate in wealth which has been acquired by science without the use of the joint property, and which is technically named the acquisition of a scholar: not co-heirs inferior in learning, or *absolutely* illiterate; in contemplation of this it is said, "being unlearned" (LXXIII).

"Or any thing which they themselves have acquired," excepting that for which there is a cause of severalty. The text (CCCLXVIII) must be so supplied, according to the *Retnácara*. Consequently, the virtual sense of the term "self-acquired," is, "gained by any one of the parceners."

CCCLXIX.

CÁTYÁYANA:—After delivering what is due as a friendly gift *promised by the father*, let the remainder be divided among the heirs: it shall be received in order by the sons, *or other descendants of the last owner*, as far as the fourth degree.

Such things as have been promised by the father in donation to any person are amicable presents: after delivering those *promised* gifts, the remainder shall be divided. In answer to the question, who shall receive shares, the brothers, or any other persons? the legislator adds, "*the heritage shall be received in order* by lineal descendants as far as the fourth degree," conformably with the text of MENU, propounded under the head of Inheritance.

CCCLXX.

MENU:—To three *ancestors* must water be given at their obsequies; for three (*the father, his father, and the paternal great grandfather*) is the funeral cake ordained:—the fourth *in descent* is the giver *of oblations* to them *and their heirs, if they die without nearer descendants;* but the fifth has no concern *with the gift of the funeral cake.*

To three, the father, the paternal grandfather, and paternal great-grandfather, water and cakes must be offered: it being thence deduced, that he who confers a benefit on the late owner shall take his heritage, it is suggested, that the fourth in descent from him, namely, the son's grandson, is entitled to a share. Such is the opinion delivered in the *Retnacára.* Thus the meaning is, that the wealth to be divided *shall be received, &c.* But HELÁYUDHA says, what was promised *shall be received by descendants of the donee down to the fourth in descent:* it may be taken by any one of the lineal descendants of him to whom it was promised, down to the great-grandson: if the donee be dead, it shall be received by his son; or, in case of his death, by the son's son; or, if *all* these be deceased, by the son of the grandson. This also is founded on the text of MENU (CCCLXX).

It should be here noticed, that the thing promised, being given to any one descendant of him to whom the promise was made, shall be taken exclusively by that *one descendant:* it shall not be shared by his brother or other co-heir, for it had not become the property of him to whom the promise was made; and a right is only vested in the person on whom a gift is *actually* bestowed. But if it were already given, though not delivered, then

indeed, according to JÍMÚTAVÁHANA, property was vested in the donee: it shall therefore be divided among his heirs. But, according to the opinion of those who affirm property to be vested by acceptance, the gift intended for the father in the mean time becoming similar to unclaimed effects, ought to be accepted indifferently by all the sons; and the single acceptance of one is therefore improper.

We resume the subject. After paying what has been promised by the father as a present (that is, what has been given by him but not delivered,) and a debt contracted by him, the remainder shall be divided, as declared by NÁREDA (CXI): "To the claimants on the heritage of the father;" to those to whom gift or payment has been promised by him (CXI): so authors *expound the term*. What has been given away by the father, though not delivered, is no longer his property; partition could not therefore be supposed But the author of the *Pracáśa* reads *pitrĭ dáněbhyah*, instead of *pitrĭ dáyěbhyah*: still the sense is the same, as has been remarked by CHANDÉSWARA.

"The debts of the father" (CXI); this is a mere instance of a general meaning: one contracted by a paternal uncle, or other person, for the support of the family, must be likewise discharged.

CCCLXXI.

CÁTYÁYANA:—A debt contracted by a brother, a paternal uncle, or a mother, for the *support of the* family, must be fully discharged by the co-heirs when partition is made:

2. That debt must be paid to the creditor; but he shall not exact payment when the demand is contested, unless it be proved by evidence.

If the father affirmed "the debt which has been contracted is not payable by me;" then, after his death, that debt shall only be paid by his son when it is proved by evidence, otherwise it shall not be paid. Such is the meaning *of the text* (CCCLXXI), as explained in the *Retnácara*; but if the debt be uncontested, it must be paid without evidence adduced.

A debt contracted by an undivided co-heir even without *the* assent *of parceners*, or after partition with *their* assent, must be paid (Book I, v. CLXXXI). The precept is general, including brother's sons and the rest.

CCCLXXII.

The debt of his father, his own debt incurred on account of those of his father, and one contracted by a parcener himself *for the support of the family*, must be discharged *by him* jointly with his kinsmen when partition is made.

The debt of his father, though not contracted for the support of the family, must be paid, as mentioned in the *first* book, On Loans (Book I, Chap. V). One incurred by a parcener himself on account of sums due by his father, that is, for the payment of his father's debts, must be discharged by all the brethren when partition is made. One contracted by the parcener himself for the support of the family, must be paid by all the brethren at the time of partition. Such is the interpretation, not inconsistent with the gloss of CHANDÉSWARA.

CCCLXXIII.

What has been given away for *the* religious purposes *of one individual*, a friendly gift, and *a loan* made on his sole account, shall, if discovered, become part of his allotment; *for* the patrimony cannot be aliened *by one parcener on his separate account.*

What is given away for religious purposes, that is, solely for his own religious purposes, he shall share at the time of partition; *in other words*, his share shall be made good, including in it the sum given away. So likewise in the case of a friendly gift. "And a loan made on his sole account:" for example, during co-parcenary, a stranger asked a loan of one brother: he replied, "I will give it;" but the rest of the brethren forbade it, and he said, "this loan shall remain on my sole account:" in this and similar instances, a sum lent on the sole account of one parcener he shall share; *in other words*, that sum shall be included in the full share allotted to him. The reason is subjoined; "*for* the patrimony cannot be aliened:" a separate gift cannot be made out of the patrimony or joint estate, nor an act annulling property be done. The *Calpateru.*

"If discovered," being ascertained: this is an epithet expressing a matter of course;* for there could be no dispute among brothers concerning a matter which was not detected. Consequently, if it be concealed, there is simply a moral offence. Or joint property having been expended for a separate religious purpose, by one who *usually* disburses money for such joint uses; but *the circumstance* being accidentally forgotten, the unintentional act is no offence, any more than *the seizure of* another's property *by mistake*: to denote this, it is said, "if discovered." "A loan made" is a mere instance of a general meaning; for the law is the same in the case of sale, purchase, hypothecation, or the like. "For religious purposes," is also a mere illustration: for the same must be understood of wealth aliened, for gaming, for harlots, or the like.

But the author of the *Pracáśa* and the *Párijáta* thus expound the text: a debt contracted *by one parcener* for *separate* religious purposes, or *a sum borrowed and* given away through affection, or for private uses, he shall divide: borrowing money during co-parcenary, a separate religious purpose has been effected; or *the sum* has been given away to any person through affection, or enjoyment, such as the wearing of delicate apparel or the like, has been therewith obtained: such debts he shall "divide;" that is, he shall remove them from any connexion with the rest of the brethren, *the term being here used* as in the example, "divide the leaf from the tree:" *in a word*, such a debt shall not be paid by the rest of the brethren; gift or payment of the debt shall not be made out of the patrimony.

CHANDÉSWARA, quoting the several opinions, adds; 'in fact all this is 'determinately meant; it is proper to explain the text as bearing all *these* 'senses.' It must be inferred, that, like an ambiguous poem, two senses are intended by the Sage; or one is expressed, and the other is deduced from parity of reasoning.

"For enjoyment;" if one parcener expend joint property for his pleasures, and permit not another brother to do so, his debt shall not be

* *Swarúpasat*: deemed almost superfluous, since it must, even though not expressed, be inferred from the "nature" of the thing spoken of: a truism, if I may use this word. T.

discharged, and his expenditure shall be included in his allotment; but if all expend joint property for religious purposes, or for *sensual* gratifications, then, all having enjoyed the property, there shall be no inquiry touching the greater or less *expenditure*, any more than in the case of acquisition made by all *the parceners.* But if a dishonest co-heir dissipate wealth at his pleasure for his own enjoyments or the like, and, with a view to his future justification, persuade another brother to expend a trifling sum; then, the fraudulent intent being proved, it is directed that the amount which has been dissipated by the dishonest co-heir shall be charged against his share; for with him, in effect, originated the use made of the joint property by the other brother.

If one brother, going from place to place, and earning wealth, support the family; then his expenditure of joint property for the wearing of delicate apparel and other enjoyments, is *a disbursement* on the part of all *the co-heirs;* and a debt contracted by him for that purpose must be paid by all *of them:* on the interpretation of the *Calpateru*, is not this inconsistent with the text of CÁTYÁYANA (CCCLXXVII 4); for there is no distinction specified in regard to expenditure for *purposes* of duty, from an impulse of affection or the like? Consider that text as relating to indispensable duties, such as the investiture of a son with the mark of his class, or the like, as well as necessary consumption.

If one parcener expend joint property for his own religious purposes, the merit is *supposed to be* exclusively his own; does not this contradict the speech of VYÁSA to YUDHISHT'HIRA in the MAHÁBHÁRATA, "If thou sacrifice, O king! all will have sacrificed;" for it is there expressed that BHÍMA and the rest also partake of the religious merit? A rite performed with a view to the consequent merit of all the brethren, fulfils the duty of all; one performed with a view to the obligations of one brother, fulfils his duty only: there is consequently no discrepance. By parity of reasoning, should it not be the same in the case of sale? That is admissible.

If any one parcener, expending the joint property, acquire any wealth for himself, would it not be exclusively his own? It should not be answered, that is admissible; but the text, which allots a double share *only* to the acquirer, relates to the case where a parcener expending joint property acquires wealth intended for all the co-heirs. Were it so, fraud would not be obviated: for a dishonest parcener, occupied in acquiring wealth by the expenditure of joint property, would affirm, when he afterwards finds a gain, "this was earned by me on my own sole account;" if he perceive a loss, he would say, "it was done for all *the co-heirs.*"

As for what is argued, that this law relates only to wealth given away for religious purposes and the like, since that only is mentioned in the text (CCCLXIII), but, in other cases, whatever is acquired by the expenditure of joint property, is common *to the parceners;* that inference is questionable: for it is irregular to establish various rules, where the reason of the law is the same; and VRÍHASPATI says, "if no decision were made according to the reason of the law, there might be a failure of justice."

On this some remark, that religious merit, wealth, or any other acquisition made by the expenditure of joint property, is common to all the parceners; as appears from the text of MENU (XVIII), and from the speech cited from the *Mahábhárata*, and from the texts of VASISHT'HA and others (CCCLVI, &c). If the rest oppose one who expends joint property to accomplish a joint business, and he persist in the disbursement, saying, "the

expense and profit are mine;" whatever is then acquired by him, whether religious merit, wealth, or the like, belongs exclusively to him; otherwise it is common to the parceners. It should not be objected, that still there is a contradiction to reason: thus, if he privately, or unopposed, gain religious merit or the like for himself, how can they have a share, since the fruit arising from the act is not produced *by them who were* neither intended *by the actor* nor *themselves* agents in it? Though neither intended, nor *himself* the actor, the owner of the wealth which has been employed is entitled to the produce. Any one carrying on traffic with the property of another, unauthorized by him, cannot claim the gain; if he might, the holder of a deposit, having obtained interest *on it by lending* the thing which was intrusted to him, could claim that interest as his own. In the case above mentioned, since the acquirer is an undivided co-heir, and the wealth common to the parceners, there is no theft; and therefore no fine shall be imposed: *an allotment*, such as a double share or the like, is the hire of his labour. These lawyers thus reconcile the *seeming* contradictions.

The practice relative to separate property hardly occurs in the case of wealth gained through the use of the common stock: but if the acquirer were opposed by the rest, his acquisition is separate property. As for the argument, that, in a case of religious duty, the effect corresponds with the design: thus, rites performed by an opulent son for the sake of his deceased father, produce benefit to the father alone; but in civil affairs it is not so, since there is no proof of this point: hence that act of religion which a man performs, though forbidden by his co-heirs, is exclusively his own; but a *pecuniary* acquisition made for himself belongs to all the owners of the wealth which is employed: that argument is disputable, for a debt is also mentioned in this text.

Others, connecting the words "on his own sole account," with the three terms of the text (CCCLXXIII), thus expound it; charges for a co-heir's own use must be defrayed out of the patrimony. Thus, there is no inconsistency with the text above-noticed (CCCLXXVII 4). What is given for *separate* religious purposes, and what is bestowed through affection, are considered as given for his own sake. In like manner, according to the opinion of the author of the *Pracáśa*, if one brother use the patrimony, and another, happening to be in another place, contract a debt for his subsistence, that ought to be paid by him who enjoys the common estate. It is proper to connect the terms "given for religious purposes," and "bestowed through friendship," with the words "on his sole account." Such being the case, must not a debt incurred for his own enjoyments be paid out of the property which is held in common with another brother? It is not consistent with the law, that money borrowed *by one parcener*, of his own accord, for any other purpose but for the support of the family, should be repaid out of the joint property. It should not be objected as a consequence, that a debt incurred by him for his subsistence or the like would not be discharged. The payment of such debts is established by the reason of the law. Does not the text, as interpreted by the author of the *Pracáśa*, consequently become unmeaning? No; for the sense of former texts is confirmed by this. But those *lawyers* hold, that the precept was necessary; for it moreover propounds the severalty of religious merit and the like gained by *the use of* joint property.

SECT. II.—*On Disputed Partition.*

ART. I.—*On the Distribution of Effects concealed.*

CCCLXXIV.

CÁTYÁYANA:—A house, arable land, or quadrupeds, discovered *after partition to have been the property of the deceased,* must be divided: if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law.

2. Thus MENU declared, that household utensils, beasts of burden, or milch cattle, ornaments, and slaves, must be divided, when discovered *among the heirs*; and that, if effects are *suspected to be* hidden, a discovery must be obtained by the *cósha*, or an ordeal by drinking water in which an idol has been washed.

"Ordeal;" a solemn trial *by water*: this he explains *in the second verse.* "Household utensils;" the mortar and the rest. "Slaves;" bondmen and other servants. The rest is well known, and familiar.

CHANDÉSWARA.

When some cause is shown for suspecting that effects are concealed, then only shall ordeal be performed. For example; the income is great, and expense small; but he who superintends the receipts and disbursements does not satisfactorily account for them: again; when the brethren, at the time of partition, claim a chattel previously seen, and the brother who manages *the household affairs* alleges, but does not prove, its consumption: again; the manager has acknowledged ten pieces of money, and afterward it is by some means discovered that he had eleven *such* pieces in his hands: in these and similar cases ordeal must be performed. Else, since doubts may be entertained in every instance, partition could scarcely be made without it. To this opinion RAGHUNANDANA assents.

"*Cósha;*" a trial by touching *or drinking* water in which *the image of* a ferocious deity has *been* bathed. The form of this *trial* must be sought in treatises on the subject of Ordeal. Should more effects be discovered by this or other means, they shall only be divided: he who secreted them shall not be deprived of his share, nor shall he be amerced; for he is not guilty of theft by secreting those effects. This relates to the case when suspicion arises at the time of partition; if it arise subsequently, MENU directs *the proceeding.*

CCCLXXV.

MENU:—When all the debts and wealth have been justly distributed according to law, any property that may afterwards be discovered, shall be subject to a similar distribution.

"Afterwards discovered;" subsequently known from popular proof: ascertained, or justly suspected. Ordeal is not directed on *mere* suspicion entertained in the mind of one brother after partition, without a probability of embezzlement, arising from *circumstantial* evidence. However, should ordeal happen to be directed *without sufficient grounds,* but the suspected

person be thereupon convicted of having secreted effects, then also an equal partition shall be made. Does not this contradict the terms of the text, "any property that may be afterwards discovered," (*paśchát dríśyaté*)? No; for the verb *dris* bears the same sense of "know" *as well as* "*see.*" Then ordeal would be directed on a mere suspicion entertained in the mind *of one co-heir?* No; for it can only be directed with propriety, when the king, or the umpire, after hearing the allegations of the plaintiff and defendant, sees ground for doubt. But in this case, the plaintiff being unable to set forth sufficient cause, the judge or arbitrator entertains no suspicion *against the defendant;* and ordeal is not therefore enjoined. Such is the principle *of the law.*

"According to law" (CCCLXXV). If the distribution were illegal, a second partition must be made, even though concealment be not alleged; but if the distribution had been made according to law, no second partition shall be granted unless effects were secreted.

CCCLXXVI.

YÁJNYAWALCYA:—When effects, secreted by one parcener from the other, are discovered after partition, the co-heirs shall again distribute those effects in equal shares: this is a settled law.

Partition being suggested as a matter of course, it is intimated, by the enunciation of this text, that the crime of theft is not committed by concealing effects held in co-parcenary. So HELÁYUDHA, VISWARÚPA, CHANDÉSWARA, JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest.

"In equal shares:" this is not intended to deny the right of primogeniture, but to remove the doubt whether he (*the concealer*) shall have a less share, because he secreted the effects: else, an elder brother, though blameless, would lose his greater portion when a younger brother has embezzled any part of the property, which would be contrary to reason; and the sons of a *Bráhmaní*, and of a *Cshatriyá* wife, would have equal shares. This very exposition is delivered by JÍMÚTAVÁHANA. "Equal," here intends such share as would have been given, had not effects been secreted.

CCCLXXVII.

CÁTYÁYANA:—Recovering what has been embezzled by any one *of the co-heirs*, let sons, after the death of the father, distribute it equally among the brethren.

2. If the parceners have secreted part of the assets from each other, or if any mistake has been made in the partition, on a subsequent discovery, there must be an equal division of what is restored: this is a law of BHRIGU.

3. What is *singly* acquired by one *of the brethren* after partition, belongs exclusively to him; but let him again bring into partition what is recovered after it had been stolen or lost, and that which is above-mentioned.

4. Effects which a kinsman has concealed, let not a co-heir *at first* use violence to make him restore, *but let him begin with friendly expostulations;* nor let a co-heir be obliged to make good what he had expended *before partition for the necessary support of his family.*

"Recovering;" obtaining: for there scarcely is a difference between the sense of go and obtain; the one is included in the other.*

"Secreted from each other;" if all the brothers have severally secreted something, and the whole be discovered after partition, this is propounded, to remove the doubt whether that which each has concealed shall belong exclusively to him, without discriminating the greater or less value, in like manner as in the case of acquisition *severally made by all the co-heirs.* "Or if any mistake has been made;" for example, if more have been given to one *than to another,* by mistake, or *with intention* to defraud *that* other co-heir, then, should the excess be subsequently ascertained, lots shall again be cast; but not upon the simple allegation of an unfair distribution. Thus the text of MENU (CCLII 6) must be considered as relating to partition made according to law. The following text of VRĬHASPATI also relates to the same subject:

CCCLXXVIII.

VRĬHASPATI:—Whatever share is enjoyed by each, let not that be contested; if he subsequently dispute a distribution, which was made with his own consent,

2. He shall be compelled by the king to abide by his share, or be amerced if he persist in contention.

"A distribution made with his own consent;" but if the plaintiff said, even at the time of partition, "I will not accept this allotment," but was compelled to receive it by a partial and powerful umpire, he may obtain a second partition, on setting forth the whole circumstances before the king, with sufficient proof, and on showing the defect of the distribution. This is intimated by the text, and has been expressly declared by CÁTYÁYANA (CCCLXXVII 2). But if he then assented to the distribution, whether ill or well made, and now allege that an unfair division took place, he shall be compelled by the king to abide by his share; and if he persist in contempt of the king's command, and cannot show the disparity *to have been* unknown at the time of partition, he shall be amerced, that is, fined by the king. If he then assented to an unequal distribution, knowing the disparity, it is unreasonable that the inequality should be now investigated. RAGHUNANDANA holds, that the same sense may be deduced from the single expression "made with his own consent." His acquiescence must be here understood to have been voluntary, not proceeding from the menaces of the umpire; for a contract, to which a man has consented with his lips, under the impression of fear or the like, is declared null (Book II, Chap. IV, v. LVIII). It should not be objected, that, in the case of compulsion, there is no assent. Without will, or assent, there could be no determination to action.

* All verbs which signify 'to go,' also signify 'to obtain.' T.

"On a subsequent discovery, there must be an equal division of what is "restored:" hence it appears, that a distribution of that only shall be made; what had been already distributed shall not be again divided. "An equal partition" *is mentioned* to remove the doubt, whether no share, or a less allotment, shall be given *to the concealer*, because he had secreted the effects. RAGHUNANDANA.

To this some lawyers object, that CÁTYÁYANA has said, "on a subse-"quent discovery, there shall be an equal partition of what is restored," because there could be no second partition, if the effects, mutually secreted, were not restored; it is not deduced from the terms of the text, that so much only *as is refunded* shall be divided. It should not be answered, that this meaning is nevertheless deduced from the expression "*restored* on a subse-"quent discovery." This term is here inserted, to remove the doubt whether co-heirs shall divide what they had secreted from each other, if discovered at the time of partition; but not, if subsequently detected.

If this *objection be proposed, the answer is*, No; for a second partition of what has been already distributed is not inferred, because a division of what may be subsequently discovered is ordained: MENU and others do forbid *a second partition;* and a disquisition on words, when the consequence would be unjust, is nothing to the purpose.

"What is obtained by a divided brother, &c." (CCCLXXVII 3); what is acquired after partition by the use of *his* separate *share of the* patrimony, belongs exclusively to him *who acquired it*. This declares *what was* a matter of course: or it means, that any thing which is gained after partition by the use of common property remaining to be divided, shall be taken by him alone *who acquired it;* one share each shall not be allotted to the other co-heirs, and two to the acquirer: however, something must be given by him as a recompense for the use of the property; and that shall be regulated in proportion to the magnitude of the sum and the labour of the man, as in the case of wealth acquired by one among associated traders, upon the joint stock.

"Singly by one of the brethren after partition" (CCCLXXVII 3); connecting these terms, ancient authors infer, that, if wealth be acquired by co-heirs before partition, even without supplies from the common estate, those who contribute not to the acquisition shall nevertheless receive shares. But that has been already impugned by JÍMÚTAVÁHANA, because VYÁSA (CX) has ordained a double share for the acquirer in the case where the joint property has been used, but no legislator has propounded a special allotment for the case where it has not been employed. However, what is delivered to one, but intended for all, must be equally shared by them, because all are donees; but if the gift were obtained by labour, it shall be unequally divided. Such is the principle of the law.

"Stolen;" (CCCLXXVII 3) taken away by thieves. "Lost;" missing, being covered with earth or the like, or having been taken by a stranger while it was in a situation of a waif. "That which is above mentioned;" namely, what has been embezzled by one brother, or secreted by the co-heirs from each other, or ill distributed. These things shall be again brought into partition; these only shall be again divided, not any other things: this is a precept which recapitulates the preceding rule. The second partition shall be made *proportionately* by a reference to other paternal wealth already distributed.

"Effects which a kinsman has concealed" (CCCLXXVII); joint property embezzled by him: this term is here secondary, for the case does not fall within the definition. Theft is the taking possession of a thing which appertains solely to another; but these effects do not solely belong to another person. He shall be made to restore them by mild expostulation and similar means, not by violence. RAGHUNANDANA.

It may be asked, if he restore them not after friendly expostulation or the like, may the co-heir use compulsion or not? It should not be argued, from the words of the legislator, "let not a co-heir use violence to make him restore," that it shall not *even then* be used. It would contradict reason, that punishment should be denounced against him who formerly assented to the distribution, but now, thinking his allotment unequitable, desires a second partition, but does not seek to obtain the common property by fraud or the like, while no punishment is denounced against this man *who defrauds his co-heirs*. It is said, still the fine is, in this case also, imposed for disobedience to the king's commands, or for other instances of contumacy, not for the simple act of concealment. Punishment is inflicted in the present case, as on a thief, for the simple act of taking *the effects*.

"Let not a co-heir use violence, but artifice or the like, to make him "restore *effects concealed*." The *Retnácara*.

"Nor let a co-heir be obliged to make good what he had expended;" what he has consumed more than his co-heirs, before partition, he shall not be compelled to make good.

JÍMÚTAVÁHANA, RAGHUNANDANA, and others.

But, in fact, since this is mentioned under the title of Effects concealed, it should be considered as relating to embezzlement. Consequently, this text denies that others shall receive shares of the value of what he has consumed out of the land, or other property, which he embezzled. Hence he shall not be compelled to make good the food and apparel obtained from the undivided property of separated kinsmen. It should not be objected, that, were it so, the word "co-heir," or undivided kinsman (CCCLXXVII 4) would be unmeaning. They are co-parceners and united kinsmen in respect of their shares in that property *which is yet undivided;* but if he consume the several property of another, he must necessarily pay the value of what he has wasted. Nor should it be objected, that the usufruct of undivided wealth appertaining to separated co-heirs, but secreted by one parcener, must be made good, because *the reverse* is not expressly said by any author, and the literal sense of the text does not show it. Since the use of joint property, appertaining to disunited co-heirs, is no more a theft than the employment of wealth belonging to co-parceners, compensation for what is destroyed by use alone would not be proper, and such is the object of inserting that precept under the title of Effects concealed. This inference we hold reasonable.

CCCLXXIX.

VRĬHASPATI:—If the loan or bailment of joint property be fraudulently concealed, let the king use means to detect the cheat and reclaim the defrauder, but not compel him by violence to restore the property:

2. Those crafty and covetous men who live by deception, and detain the property of others, should be reclaimed by mild methods, by the loss of their own wealth, or by artifice.

'If those debts and deposits, which are *claims* common to the parceners, be concealed;' such is the meaning. The construction is not, 'if joint property be secreted, if a debt be concealed, &c.:' for it is declared in the *first* book, On Loans, that force may be used to compel payment, if a *just* debt be not acknowledged *by the debtor*. 'If concealment of a loan or bailment be *made* by fraud;' such is the literal construction, so supplying the text. "Let the king use means to detect the cheat and reclaim the defrauder;" using means to defeat the fraud of the concealer, let the king compel restoration, but not by violent methods. For example, a co-heir, lending money to any person, conceals it from his brethren, and they have made partition, but, discovering the fraud by some circumstances, complain before the king; let not the king seize him and extort a confession, but proceed by a circumstantial inquiry. The form of proceeding may be this: let the king ask him, "Is DÉVADATTA thy debtor or not?" He replies, "DÉVADATTA is not "indebted to me, but to my wife's brother;" then let the king ask, "in "what sum, and when lent?" and cause his answer to be noted: afterward let the king call the absent brother-in-law, and examine him on the sum borrowed by DÉVADATTA, and on the date of the loan, and various other points. If the answers correspond, let him follow another mode of investigation; but if they disagree, then, having detected the fraud, consisting in a false affirmation, let him compel restoration by admonition or other mild methods, or by artifice.

Or the sense may be, 'if the loan or bailment of joint property be concealed, let the king compel restoration, either by artifice, or by adopting a process which imposes on the concealer a loss of his own wealth.' The disjunctive particle must be supplied in the text. "Loss of his own wealth" may be thus exemplified; let the king attach his land, or other property, until he make satisfaction.

"Deceivers," or men who live by delusion, detain the wealth of others; such is the meaning of the text (CCCLXXIX 2). They are crafty and covetous; for, without avarice and dishonesty, they would not fraudulently seize the property of another. They should be reclaimed by mild methods, or by the loss sustained by themselves, or by artifice.

The precepts concerning partition among brothers should be also observed, with due attention to circumstances, in partition made by a father. For instance, a full share must be solely allotted to the son lawfully begotten, and either the shares ordained in the *Brahma purána*, or a third part, shall be given to the rest; but, on failure of one lawfully begotten, a full share must be allotted to them also, in the order of succession. Of wealth not *universally* partible, a distribution shall be either made, or refused, in the mode above explained: and in like manner shall effects concealed *be brought into partition*. Again, if sons have themselves made an acquisition during the life of the father, he shall have half, if the patrimony were used, and two shares, according to JÍMÚTAVÁHANA, if the common stock have not been employed: this has been already explained at large. But if the wealth of the brethren have been used, the father shall have two shares, the acquirer two, and the parceners one each, according to RAGHUNANDANA. That the acquirer shall have two shares, and the rest

one each, if joint property were employed, is deduced from the texts of Vyása and the rest; but whence is a similar allotment inferred, if the several property of the brothers have been used? The commentator himself has already said, that equal partition is proper if wealth be acquired by the labour of a horse belonging to one, and by the personal exertions of another. To this some lawyers reply, the remark supposes the case of an acquisition made on wealth common to the brethren and acquirer; but, in the instance of supplies received out of several property, the father shall have two shares, under the authority of the text, and the gainer and owner a share a-piece; if the acquirers be numerous, they shall take and divide a single share: so likewise if the wealth which was employed *severally* belonged to many persons; for a single benefit arose from the use of all the sums. It should not be argued, that, if wealth be acquired by two brothers with supplies from the several* property of the rest, they shall take and divide two shares; they shall not receive two a-piece: consequently, if an acquisition be made by a single co-heir, unaided by an associate, he has two shares; but in this case he has in reality one only, which would be a discouragement *to the making of* acquisitions with the aid of a companion. There may be encouragement from the expectation of gaining greater wealth by the exertions of two persons than of one. Two shares being ordained for the father, in the case of an acquisition of wealth common to the brethren, the same rule should be also observed, *with the exceptions maintained* according to *the different* opinions *of commentators*, in the case of wealth acquired by science. If the father maintain the family of his son studying science, *what shall be the distribution?* Since he is of course entitled to a double portion, there is no difference if he maintain *the family of the student*. It should not be argued, that a *still* greater share *ought to be allotted*. The father is bound to support the family of his son: and it is not true that those of whom the master is entitled to support from a certain person, are not entitled to a maintenance from the same person. If it be inferred, from the literal sense of the following text of Menu, that a father is not absolutely bound to maintain the family of his son, then the word "brother," in a text above cited (CCCLVII), must be taken in a rigid sense.

Menu declared, that a mother and a father in their old age, a virtuous wife, and an infant son, must be maintained, even though doing a hundred times that which ought not to be done.†

It should not be objected, that a paternal uncle, a brother's son, and the rest, would receive no share of the acquisition of science, in the sole right of having maintained the family of a learned co-heir. The rights of a brother must be ascribed even to a paternal uncle, a brother's son, and the rest, because they take *shares* from analogy to brothers. It should be here remarked, that, if the co-heir, who went to study a science, maintain the family of him who supports his household, (that family happening to reside at the same place *where he studies*,) no share of the acquisition of science shall be given to him who maintains the family of the learned brother; for,

* So the manuscript; but the sense manifestly points to the reverse: in many such instances, I have, with the advice of *Pandits*, corrected the obvious errors of the transcript, but shall not take that freedom in the present instance. T.

† The text is quoted in Chapter VIII, as inculcating the necessity of maintaining these relatives, even by the commission of offences: I have endeavoured to preserve the ambiguity of the original. T.

in effect, there is an interchange of maintenance. Such is the inference of common sense. Again; if *one receive alms from* some man religiously bountiful, *and* support the families both of the student and of another parcener, he is not considered as one who maintains *the family of a learned co-heir;* and therefore he shall not receive a share of wealth acquired by science. But if one brother only share the acceptance, then the maintenance given by him is deemed in law support *of the family of a learned co-heir,* since he partakes of *any* sin arising from that acceptance: it is therefore proper that he should receive a share *of the acquisition.* All this relates to wealth gained before partition; but if it be acquired after a distribution, even a father shall have no share of it.

ART. II.—*On Dubious Partition.*

CCCLXXX.

NÁREDA:—When co-heirs have made a partition, the acts of giving and receiving cattle, grain, houses, land, household establishments, dressing victuals, religious duties, income and expenses, are to be considered as separate, and as proofs of a partition.*

"Dressing victuals;" for the service of guests and the like, and for the food of the family. "Religious duties;" the aggregate of constant and occasional acts *of religion.* "Income;" acquisition. "Expenses;" the gift of handsful *of grain in charity and the like.* "When co-heirs have made a partition:" this being mentioned without limitation, it is suggested that income is separate when partition has been made with the father; and this text decides the case when the fact of the distribution is questioned: hence likewise it does not relate solely to brothers; for "father and son" are mentioned in a text of YÁJNYAWALCYA as intended to determine the case of dubious partition. These are *admitted as* proofs of a *prior* distribution, on failure of a writing or other convincing evidence; for NÁREDA mentions verbal proof of separate acts, after written evidence of a partition; and in every case a written document prevails *over circumstantial proof.*

CCCLXXXI.

NÁREDA:—Should a doubt arise whether a legal partition have been made among heirs, it must be cleared by the testimony of their kinsmen *in the first place;* then by written evidence of a partition, *if there be any; if not,* by verbal proof of their separate acts.

Should a doubt arise concerning that in which partition consists; should it become a question whether a distribution have or have not been made among heirs. The *Retnácara.*

Not whether the partition be legal *or illegal,* just or unjust; for this cannot be determined by evidence of separate acts. It should not be affirmed, that the last terms of the text signify* 'placing in the house of another person the effects which are supposed to have been unfairly distributed, proceed to *investigate* the business.' NÁREDA himself makes evident, (CCCLXXX), the meaning of "separate acts;" but verbal or written evidence may be brought to prove them.

VRĬHASPATI explains the nature of a written record of partition.

* See v. CCCLXXXVII, 2.

CCCLXXXII.

VRĬHASPATI:—That record of partition which brothers, *or other co-heirs*, execute after making a just division by mutual consent, is called the written memorial of the distribution.

The term "brothers" is an instance of a general meaning; it must also be understood of a father when partition is made by him, and of brother's sons and the rest. "After making a just division:" this is a matter of course; for, though a writing be also executed when an unfair partition is made, that instrument is in fact unavailing. "By mutual consent:" this intends any one of the parceners; for the consent of all is not requisite in *undertaking* a distribution. That record of partition, or writing declaratory thereof which they execute, is called the written memorial of a distribution. Since the letters traced on the leaf express partition, the leaf itself, mediately by its contents, shows a distribution; or it does so, because that and the writing are considered as inseparable.

Again; since VRĬHASPATI calls the leaf a written memorial of the distribution, it is proper to write, *at the beginning of the instrument*, "this written record of partition;" and since it is called an instrument declaratory of a distribution, such terms should be inserted as denote partition. For example, it may be written, "I have received from you a sum so and so, and "yielded to you sums so and so, as a division of the whole patrimony, to "which we have assented." The instrument should be rendered firm, by adding "whatever shall be asserted *to the contrary* is false." The first part is sufficient to show partition, but it becomes authentic evidence by confirmation. In this document the several chattels ought to be inserted at large, by name, as they are allotted to each of the co-heirs; else proof of concealment in the partition would fail. There is no objection, if the inventory be written on the back of the instrument; but the total sum should be noted in figures, lest suspicion arise that effects, then concealed, have been subsequently inserted. But if all the effects be enumerated in the body of the instrument, it is best. The effects should be separately written under the name of each brother, for it is hardly possible to write at once the detail of what is received by each. The use of this is to ascertain at a future time the fairness or unfairness of the distribution. In like manner, the additional portion which is received in right of seniority or the like, should be inserted under the separate head of each *allotment*. This is the principal form; but, instead of it, the party may write simply, "a just distribution, made with my own consent, has been accepted by me."

The text of YÁJNYAWALCYA, expressing generally "whatever contract have been concluded" (Book I, v. XVI), the same form should be also observed in the present instance, since there is occasion for it. The precept being delivered under the title of Loans, the word "lender *or owner*" is used: in fact, that term denotes him whom the instrument concerns; consequently, as the lender is the person contemplated in the written contract of loan, so, in the present case also, he who is contemplated in the writing must be described by the same term; and thus the names of those brothers, to whom the document is addressed, should be first inserted. Since they are in rank equal to each other, a term expressive of praise is not necessary; but nothing prevents the insertion of one allusive to memory. Again; their designation by the name of their father and so forth ought to be

added, because it is directed by YÁJNYAWALCYA, and because it prevents a doubt concerning other sets of brethren bearing the same names; else, one of so many brothers bearing the same appellations might produce that very document, and be casually enabled to affirm that partition had been made between them, although it had not taken place. Again; the date of the year, month, half month, and day, ought to be inserted: and thus, what is gained subsequently to that date, is shown to be the acquisition of a separated co-heir; and the falsity of such an instrument, forged by one capable of counterfeiting every hand-writing, may be detected by proof of acts not separately done at a time posterior to the day and month inserted in that instrument. The writer should subscribe his name at the foot of the document, and subjoin the appellation of his father and other designation, as directed by the text of YÁJNYAWALCYA (Book I, v. XVIII). On the foregoing reasoning, the term debtor here signifies the person who himself subscribes the instrument, or *who executes it* through the intervention of a representative. The witnesses must sign their names, after writing the appellations of their father and other designations: the scribe should also subscribe his name. Again; a document in the hand-writing of the party is sufficient evidence without witnesses; but, in fact, their attestation ought to be taken to such an instrument. The difference and the correspondence of this, and of a written contract of loan, have been noticed. More may be established by a simple exertion of intellect.

The following text of VRĬHASPATI is cited by RAGHUNANDANA under this head:—

CCCLXXXIII.

VRĬHASPATI:—When a village, a field, and a garden, are recorded in the same grant, if any part be occupied, they are all legally possessed.

"A grant;" a written document or the like. Thus RAGHUNANDANA. Consequently he considers the term "grant" as signifying a written instrument in general. Thus, on a partition among brothers, whatever village or other land is inserted in the written record of partition, should some part thereof be occupied, and the remainder be not possessed, still the whole land is considered in law as actually possessed, not as property neglected. But if the relinquishment of it have been declared in the presence of arbitrators or the like, then, since an express declaration prevails over logical inference, it is determined by the award of arbitrators to have been abandoned.

CCCLXXXIV.

VRĬHASPATI:—In immoveable property obtained by an equitable partition, or by purchase, or inherited from the father, or received from the king, a title is gained by long possession, and lost by *silent* neglect.

2. Even in property simply obtained *with or without a fair title*, which a man has accepted and quietly possessed unmolested by another, he acquires a title; and in like manner he forfeits one by silent neglect.

Property inherited from the father, which had devolved on him from his father, or which he had *himself* gained; this is of two sorts, obtained by partition with brothers, or acquired by purchase: in such property of the father, obtained in these two ways, a title is *gained by possession;* and this is a general instance comprehending other wealth inherited from a parent. Or four sorts of property *are intended by the text*, obtained by equitable partition, acquired by purchase, inherited from the father, and received from the king. It should not be argued, that the mention of "property obtained by equitable partition" is useless, because that is suggested by the term "inherited from the father." It is mentioned to include what is obtained by equal partition among partners in trade and adventure. Nor should it be argued, *on the other hand*, that the term "inherited from the father" is superfluous, because that is included under "property obtained by equitable partition." It is mentioned to include the undivided patrimony. In all such property a title is lost by silent neglect. For example; four persons, inhabiting the same village, anyhow acquire a certain quantity of land, and, dividing it into four shares, execute a written document; one does not occupy the portion allotted to him by that writing, but, on the contrary, neglects it, and another holds the possession of it: in this case, he who silently neglects his right, forfeits his title. In like manner, one who has purchased land, but does not take possession of it, forfeits his title by his silent neglect: but he may recover the price after much discussion. Again; one inheriting wealth left by his father, does not occupy it, and another does; in that case it belongs exclusively to the possessor. In like manner, if a man do not occupy land or the like received from the king or other benefactor, but, on the contrary, neglect it, his title is lost.

It should not be affirmed, that the mention of loss by silent neglect is useless, because it follows, from declaring a title gained by possession, that he who neglects his right forfeits his title. It is pertinent, as it shows this consequence, that, if property obtained by a just partition be fortuitously unoccupied, but not *grossly* neglected, the title is not lost. Is it, or is it not, requisite that the property should have been unpossessed during the period of twenty years, which is propounded by YÁJNYAWALCYA? It is answered, *undisturbed* possession without ownership during twenty years, not the owner's want of possession, is propounded by YÁJNYAWALCYA as the legal prescription by the silent neglect of the owner: thus the period propounded is that in which a notorious fair title is forfeited; but, in the present case, silent neglect precludes proof of the title. It should not be argued, that a right is vested immediately after purchase or the like, and is in this case lost by neglect. Were it so, nothing could prevent a reference to the period of twenty years becoming requisite; but, in the present instance, it is inferred, that a notorious title does not exist, because a doubt may be entertained whether the partition was not disapproved; or whether the heir has not given up his share to a co-heir, and accepted elsewhere an allotment, which he enjoys; or whether he has not given away his share to some stranger; or, in the case of purchase, whether he did or did not assent to the bargain; or, in the instance of paternal wealth, whether the father did or did not give it to the present possessor; or, in the case of a present received from the king, whether the royal donation was accepted or not. Hence there is no reference to the period of twenty years; but the true meaning is, that his title is lost then only when he has not taken possession, though healthful, able to occupy the land, and unopposed by any other claim besides that existing donation.

If many villages or other tracts of land be specified in the same writing, the possession of a part is, in law, possession of the whole, as declared by VRĬHASPATI. In the case of wealth received from the king, there are other points to be considered. "In property simply obtained, *which a man enjoys* unmolested by another, he acquires a title;" but if any one contested it when possession was first taken, occupancy, without refuting that claim, is not sufficient *to establish a right*. Hence, a fair title in uncontested property being gained by single occupancy, in the presence of superior power or the like, and during the government of a king, *from whom redress might have been obtained*, and that title becoming known to many persons, its forfeiture cannot afterwards be inferred without a sufficient cause, such as gift, sale, barter, adverse possession during twenty years, and the like. Consequently, after the period of occupancy, a written document, with possession during some short time, is sufficient evidence *of a title;* before that period elapse, the writing is singly sufficient proof; even after it has elapsed, a written document is evidence, provided the party were precluded from taking possession, by sickness, by absence in a foreign country, or by any other sufficient cause: *these are evidence of a right*, so long as the adversary do not bring proof that no fair title existed. Hence it is suggested, that writings and the rest are not *in general* sufficient evidence *unsupported by proof of possession or of a fair title.*

In the text of NÁREDA (CCCLXXXI), "by kinsmen" is exhibited in the third case denoting an epithet; consequently the meaning is, "by a written memorial of partition attested by kinsmen as witnesses." It is accordingly said by JÍMÚTAVÁHANA, they are here mentioned, intending that, on failure of them, the attestation of other witnesses should be taken. As the evidence of persons similar in class and profession to the plaintiff and defendant is preferred, but others may be examined in the second instance, *or on failure of such;* so, in a dispute concerning partition, the evidence of kinsmen is required in the first instance, and the testimony of others in the second, or in their default. If a record of partition, attested by others than kinsmen, be produced, the king should therefore ask the reason why they were not made witnesses; and if the plaintiff cannot allege a *sufficient* cause, a doubt arises on the authenticity of the document. But CHANDÉSWARA says distinctly, "it must be cleared by the evidence of witnesses." The term (*jnyáti*) is expounded, in the *Viváda Chintámeni*, persons who saw the partition. According to these two commentaries, it is only suggested, by that term, that the doubt must be cleared by the evidence of witnesses. There is no objection to a similar exposition on the gloss of JÍMÚTAVÁHANA. But, in fact, it is declared, that written evidence prevails over mere verbal testimony: according to the observation of JÍMÚTAVÁHANA, since a writing prevails over mere verbal evidence, the prior mention of witnesses is incongruous. Again; if kinsmen, not named in the attestation of a written document, are preferrable, they must surely be preferred when they are named in such a document. A writing, attested by them, is *the* best *proof;* on failure of that, *an instrument* attested by other witnesses; in default thereof, mere verbal testimony; on failure of this again, evidence of separate acts: such briefly is the order of proof.

The term (*jnyáti*) being expounded, in the *Viváda Chintámeni*, a person who saw the partition, *it* follows, *that* the evidence of kinsmen and others *is meant*. Still the preference of them above others must be deduced from the text of SANC'HA (CCCLXXXVI). It should not be objected, that, from the coincidence *of the precepts*, near kinsmen must be understood by the term

jnyáti. Were it so, a disparagement to NÁREDA would occur; to obviate which, it is necessary to acknowledge that the word bears a general import. The admission of a secondary sense is proper, but the order of evidence is deduced from reasoning. Such is the opinion *of the commentator.*

CCCLXXXV.

YÁJNYAWALCYA :— A partition being denied, let the truth of it be ascertained by the evidence *first* of near kinsmen; *then* of relations more distant; then of witnesses *who are unconnected with the parties; then* by written proof, or by separate acts of ownership in house or field.

First, kinsmen, within the degree of *sapindas;* on failure of such, any person connected with the parties, as suggested by the general term relations; in their default, strangers also may be witnesses. JÍMÚTAVÁHANA.

Consequently, witnesses of three descriptions, and written proof, being separately mentioned, the evidence of persons who saw the partition, though not named in a written instrument, is shown to be sufficient proof, in order *as enumerated.* In *the evidence of* near and distant kinsmen, and *of* strangers, inferiority is intimated, in order as they are named; else they would not have been separately mentioned. Such is the opinion of JÍMÚTAVÁHANA. "Separate" (*yautaca*); distinct, agreeably to the sense of the verb *yu*, mix or unmix: *the meaning* consequently *is*, by *unmixt or separate acts of ownership in* house and field. The commentary on the *Dravyabháshya* explains *yu* as signifying to unmix. But others explain the term according to the *literal* sense of the verb *yu* to mix: co-parcenary is therefore inferred from mixed *or joint acts of ownership in* houses and fields, on the part of the undivided co-heirs; and conversely, separation *of co-heirs is inferred from separate acts.* Such is the meaning according to these lawyers.

CCCLXXXVI.

SANC'HA :—A doubt having arisen on the question whether a family has been divided or not, and the nearer kinsmen being unable to answer it from their own knowledge, the more distant relations ought to be witnesses.

If it be unknown to the nearer kinsmen, the family (*cula*) or more distant relations may give testimony, not an unconnected person; but if it be unknown to the distant relations, any other may be witness. Accordingly, kinsmen, being chiefly required, are alone mentioned by NÁREDA. JÍMÚTAVÁHANA so comments on the text; for YÁJNYAWALCYA notices the evidence of distant kinsmen, and of other witnesses.

The word family (*çula*) having been explained by ancient authors as signifying the fourth house, *or the vicinage*, some lawyers hold that by this term are meant the neighbours. Consequently, distant relations are suggested by the conjunctive particle subjoined to "nearer kinsmen." On failure of such, the neighbours, suggested by a term signifying the vicinage, *may be witnesses*: in their default, any others may give evidence. Or else, since the Dictionary of AMERA makes *cula* synonimous with genus, or multitude of beings of the same kind, this term may signify *peers or* persons similar by class and profession: on failure of such, the evidence of others who, though dissimilar,

are approved by Sages treating of administrative justice, must of course be admitted. It should be here remarked, that, the king and his officers being superior in power to all others, an instrument, executed in their presence, and attested by them, is most authentic.

"Whether a family has been divided or not:" on the subject of a distribution of wealth which has been inherited by a family, and of which a distribution is to be made, and on a doubt whether partition have or have not been made, *kinsmen ought to be witnesses*. RAGHUNANDANA.

He is a sharer with the family who obtains partition from them, or who claims the heritage, or a distribution of it. A doubt arising on this matter, *kinsmen ought to be witnesses*. Consequently the sense in effect is, *they ought to be witnesses* if a doubt arise concerning the distribution of a heritage: and that may be of two sorts, on the question whether partition have taken place, and whether the distribution be equitable or not. Such is the meaning of RAGHUNANDANA. It is proper, because near kinsmen best know the fairness or unfairness of the distribution.

NÁREDA himself explains the subject, to which he alludes, in saying, "it must be cleared by verbal evidence of separate acts."

CCCLXXXVII.

NÁREDA:—Of undivided brethren the religious duty is single, but after partition such duties are separately fulfilled.

2. When co-heirs have made a distribution, the acts of giving and receiving cattle, grain, houses, land, household establishments, dressing victuals, religious duties, income and expenses, are to be considered as separate and (conversely) as proofs of partition.

3. After separation, but not before it, brothers may become witnesses or sureties for each other, and may reciprocally give and receive *presents, or make contracts with each other: but, in regard to property separately acquired, they may do so even before partition.*

4. Those by whom such acts are publicly done with their own separate property, let men consider as divided, even without written evidence.*

Intending to declare *reciprocal* gifts, and similar acts, to be proofs of partition, the legislator first propounds, in the form of a precept, the *first* verse (CCCLXXXVII 1), to obviate doubt when religious duties which fall within the description of such acts are proved. The doubt may be thus exemplified: if all the brothers succeeding to the wealth of a deceased father must, though undivided, severally perform the acts appertaining to the order of a housekeeper and to the worship of deities, as they must severally perform the oblations at noon and twilight; or if they may with propriety unite for the performance of a single act of religion, though divided; then the doubt, whether partition has or has not been made, would not be cleared by the joint or separate performance of duties: but now, since undivided brethren are alone commanded to participate in single acts of duty, and disunited brothers to perform such offices severally, that doubt is cleared. Those acts, appertaining to the order of a house-

* Two of these verses have been already cited apart from the context; v. CCCLXXX, and Book I, v. CXLI. T.

keeper, which are jointly performed even by separated co-heirs, are not meant in the text of NÁREDA. These are voluntary rites, namely, a sacrifice, the consecration of a pool, or the like; for it is universally held that brothers, though united, may severally do such acts, in like manner as others may perform them jointly or severally. It will indeed be mentioned, that even a husband and wife may separately do such acts. Neither are constant duties, such as oblations at noon and twilight, *intended by* the text; for the consequence of fulfilling or omitting such duties is pronounced peculiar to the *individual* person. Consequently those acts must be understood, by the omission of which there accrues evil relative to the order of a housekeeper, such as loss of wealth or the like, or by the performance of which there accrues good relative to the same *secular* order, such as increase of wealth and the rest. *It must be* likewise *understood* of the double and single sets of oblations to ancestors, and so forth. It would be vain to expatiate.

"Religious duty" is explained by CHANDÉSWARA and VÁCHESPATI MISRA, as signifying the oblation to the assembled gods and the like. Under the term "and the like" is comprehended the service of guests, and similar offices.

"Acts of giving and receiving;" without consulting each other: purchase of "cattle," or similar things: raising "grain:" separate "field," or acceptance of mortgage or the like: "dressing victuals, and religious duties;" the double set of oblations and the rest: "income;" the acquisition of means of subsistence and so forth: "expenses;" the alienation of wealth: *all these are proofs of partition.* Thus MISRA. According to his opinion, the first verse (CCCLXXXVII 1) is not a precept, but solely intended to show that *separate* acts of religion are proofs of partition. This opinion is accurate. But some explain "grain," as signifying the sale of corn, such as rice *or the like* for food.

Thus, if one co-heir be witness or surety for a loan advanced, or other contract made by another, or if one receive a present given by the other, they must be considered, in respect of each other, as divided co-heirs. MISRA.

This is also declared in the text of YÁJNYAWALCYA; "by separate acts of ownership in house or field" (CCCLXXXV). Are those acts severally or conjunctly proofs of partition? If it be answered, each is sufficient proof; then partition is established even by the simple acquisition of wealth: and if this be deemed admissible, the text which forbids the division of wealth acquired by a parcener without using the joint property (CCCLIV 2) would be unmeaning, since a gain made by a co-heir before partition on his sole account could not be supposed. It should not be objected, that *acquisition* is not proof *of a prior distribution*, because it is resisted by the actual notoriety of the reverse. Were it so, it might be supposed to be no proof of partition *in any circumstances*, because a separate acquisition may be made even without a previous distribution. That without which another thing may exist, can be no proof of it; were it so, *the fact*, that the animal is a biped, would prove that he is a *Bráhmana*. It should not be argued, that the word "separate" conveys the denial of a common gain. That cannot be affirmed by a dilemma; for what can the dilemma be in such a denial? Is it that a joint acquisition sometimes has not taken place, or has not hitherto occurred? The first cannot be affirmed; for, even during co-parcenary, a common gain occasionally does not take place whilst the parcener is asleep, or eating, or busy in making an acquisition for his sole benefit: it cannot become proof, since partition had not really been made at that time.

The second also cannot be affirmed; for a common gain may take place at some *future* time. It should not be argued, that the want of proof of a subsequent joint acquisition is meant. That could be no evidence at the moment when partition is questioned. To this it is answered, these acts severally become proofs of a prior distribution. For example; the separate acquisition of property with the aid of paternal wealth, other than what may have been received through the favour of the father, is proof of partition; and so is a gift of paternal wealth, made in the presence of a co-heir without his assent, or the receipt of rent paid by villagers at the same time with a similar receipt of rent from them by a co-heir. The like may also be inferred in other cases, by a simple exertion of intellect.

The purchase of cattle, with wealth inherited from the father, may be proof of total separation in respect of cattle inherited from him: food prepared in distinct places *is evidence of separation;* and so is the purchase of rice or other articles, the price of which is separately paid *by each purchaser* out of wealth inherited from the father. But, when it is observed that undivided co-heirs having large families, and perceiving inconvenience in preparing their food together, dress their victuals apart, that separate cookery is merely intended for their own convenience: but preparation *of grain* for oblations to deities, for the entertainment of guests, for the support of servants, is not in that case separate. Would not the distinct preparation of food be no proof of partition among co-heirs, who, though disunited, perform the worship of deities, and other offices, out of joint property set apart for that purpose? This question is answered by asking, what difficulty follows, since the partition may be proved by other separate acts? Accordingly they are likewise propounded; else, since the preparation of food is necessary for all, that single proof might be *always* brought, and the mention of "acts of giving and receiving" would be therefore superfluous. But, in fact, they only are divided co-heirs who dress victuals separately, (and without consulting any other,) for all purposes common *to undivided co-heirs*, for their families, connexions, guests, and the like: they only ought to perform separate acts of religion. Accordingly, since the following text, after having declared single the performance of religious duties among parceners living together and partaking of the same food, pronounces it separate among disunited co-heirs, *therefore* separation in respect of food is exhibited as constituting partition. Hence, although the remainder of an estate may be undivided, it is not considered as proof that partition has not taken place; for it frequently happens that disunited co-heirs have joint property.

CCCLXXXVIII.

Among co-heirs living together and partaking of the same food, due honour shown to a *deceased* father, to deities, and to priests, shall be single; but, after partition, that shall be *done* in their several houses.

What then is the meaning of the term "partition?" This question might be proposed, and is thus answered; for it does not mean division of the patrimony, since it would follow, that no partition could take place among those who are destitute of inherited wealth. Does it not mean the division of any property whatsoever? Accordingly YÁJNYAWALCYA has said, "one who is able to earn a livelihood, and claims not a share of the joint property, may be disunited from the family, on giving him some trifle as a consideration to prevent future strife" (CVI); and there can be no necessity of separate acts of religion without partition. *It bears* not *that*

meaning; for it might be supposed that no separation could take place between those who have no property whatsoever. Consequently, the meaning of partition is separation in respect of food prepared for the entertainment of guests and relatives, and for other purposes which are common *among united co-heirs*. How then can separation take place between those who are not visited by relatives or guests? Distinct preparation of food,' after an agreement in these words, "henceforward we are disunited," is partition. Afterwards their acts of religion, and wealth or the like received on some consideration relative to the father, are separate; before that agreement they are single. It should not be objected, that, since partition may be proved by the separate preparation of food, the mention of other proofs is vain: if such dressing of victuals alone constitute partition, it is proved by the declaration of the parties; to mention it again, as evidence of a separation, is in a manner absurd. Since the term denotes the distinct preparation of food after *a declared* intention *of living disunited*, a dispute may arise in a case of doubt whether such a declaration was made: and, in that case, the previous agreement is in some instances proved by the sole evidence of *separate* preparation of food; but, in others, it is more fully established by the several acquisition *of wealth* or the like, by evidence of double acts of religion, by purchase *separately* made, and the like.

Brethren cannot become sureties nor give evidence for each other, nor make nor receive mutual loans (Book I, v. CXL). What is propounded by Nárada (CCCLXXXVII), signifies that they should reciprocally shun the gift and receipt of presents on spiritual considerations, out of joint property; the mutual connexion consists in avoiding such acts: but it is not the meaning that they must reciprocally shun giving evidence or the like; for any one co-heir must avoid bearing testimony *for another*. The text (Book I, v. CXL) had been delivered by Yájnyawalcya under the title of Sureties; it is consequently a prohibitory precept. The denial of legal evidence, and the rest, therefore indicates co-parcenary; testimony given by *one for another*, and so forth, indicates partition.

One parcener gives a common chattel to another, who accepts it, thinking, "let him now give it; hereafter his share will be so much the less, because he has relinquished this on a religious consideration for his own sole account:" since partition has not actually taken place in this instance, the gift would not be proof of separation. If to this it be answered, that which ought not to be done (for the gift of joint property, to a sharer of it, is forbidden by the law), has been done through ignorance; *we rejoin*, this must be called by some other name, for in fact such an ignorant person is scarcely found at this day.

The words "give and receive" likewise denote sale and purchase, or other contracts. This should be noticed. Partition of that property only in regard to which evidence has been given is proved *by this circumstance*. But, on the subject of slander, violence, or the like, there is no offence in a brother giving evidence and so forth, although he be an undivided parcener. However, kinsmen should not be made witnesses, that being prohibited by the following and by similar precepts: "a kinsman might speak under the influence of partial affection." But Misra observes, it is not the practice for parceners to become sureties for each other, and so forth, before their separation.

Since partition between husband and wife is impossible under the text of Apastamba (LXXXIX), it is implied, *that they cannot give evidence for each other*; else, all being alike, the separate mention of husband and wife would be useless. "Before partition" (Book I, v. CXI) is therefore

unmeaning in this instance. It should not be argued, that the term is used to authorise the gift or alienation of female property, because a wife is independent in regard to such possessions: and thus the gift or alienation of that which has been acquired by personal labour or similar means is prohibited. Still there is no argument to prove partition with her. Nor should it be asserted, that the text of MENU (Book II, Chap. IV, v. LVI) furnishes the argument, because that shows the property of the husband in wealth acquired by the wife herself. It does not show co-parcenary; for, if the text be taken in a literal sense, the husband alone has the property: were it even admitted, the term "undivided" would be superfluous, so far as relates to the husband.

When this difficulty is proposed, some lawyers reply, it must not be referred to that word, because it is a rule that an epithet is not pertinent if it be possibly incompatible. Others deduce from the text which declares property common to the married pair, that a wife has an interest in the wealth of her lord; but, her title being inferior to his, a gift or alienation made by her is forbidden: partition with a wife may take place under the text of YÁJNYAWALCYA (LXXXIII); for the precept of 'APASTAMBA, denying partition, is directly contradicted by YÁJNYAWALCYA. From the sequel of the text of 'APASTAMBA, it appears that he denies partition or separation in acts relative to the nuptial fire, in maintaining the *sacrificial* fire for one who has a consecrated hearth, and in acts of religion appertaining thereto; he does not deny partition in respect of wealth. It should not be argued, that a distribution of chattels is denied by another text of 'APASTAMBA (LXXXIX). YÁJNYAWALCYA declares partition in express terms; but that law merely implies, that a wife has property in the wealth of her husband: accordingly the text last cited is pertinent, as it explains the reason of the *former* precept; for the act of expending such wealth demonstratates ownership, not the impossibility of partition in respect of it: and thus the worship of GOD, and other duties, to be performed in common with a wife, while remaining in the order of a housekeeper, must be practised by her after partition; but the whole circle of acts relative to the nuptial fire can only be then performed in concert with her lord. It should be again noticed in this place, that wealth acquired by the wife through personal labour, and what has been received from the family of the father, mother, and husband, or any one of them, she must share with her lord, under a text above cited (Book II, Chap. IV, v. LVI); but his other wives and his sons have no participation of it, because the right of the husband is subordinate to that of the wife.

Since the man has the sole property of wealth appertaining to his wife, as shown by the text above cited (Book II, Chap. IV, v. LVI), are not his heirs entitled to her succession? It should not be answered, her incapacity for possessing exclusive property bears allusion to her dependence; for it is universally admitted, that she is capable of acts prescribed by the *Véda*, which are defrayed out of her own property. Since a slave, like a wife and a son, is, by parity of reasoning, independent in regard to wealth received through favour, the acts of religion prescribed by the *Véda* may be accomplished with that alone. Nor should it be argued, that their right to their own acquired wealth is proved, because acquisition is shown by the expression "wealth which they may earn," and because that is an act of which property is the fruit. There is no objection to the devesture of their right after vesting property in the husband and the rest; and it may be affirmed, that a right so accruing to their master, husband, or father, is the effect produced by their acts, of which property is the fruit.

To the question proposed the answer is, the dominion of the husband over any thing, not technically denominated the exclusive property of women, is propounded in the text of **Cátyáyana** (CCCCLXX), but not his sole dominion; and that only shows her subjection, because it was received through her connexion with her living husband. Again, the phrase "three persons are declared to have no wealth" signifies, that they have no independent property: it cannot be affirmed, in the literal sense of the phrase, that a woman has no wealth belonging to her; since the existence of female property, and the right of the wife over the estate of her lord, oppose the *absolute* negation of *all* connexion with property. Accordingly **Raghunandana** and others have justly said, other sons shall have shares of that which is acquired without the use of the patrimony, by one whose father is living. Again, on the death of a wife, even though she leave a son or other descendant, her husband, not her son or other lineal heir, succeeds to the wealth acquired by arts, *such as painting or spinning*; for he had ownership thereof, even while she was alive.

According to the opinion of those who affirm, that, because a wife has an interest in the estate of her living lord, (under the text which declares wealth common to the married pair,) therefore, after the death of the husband, his son, or other heir, and his wife, have property similar to that which he enjoyed, does it not follow, that a son, or other heir, has, in like manner, property similar to her's, in her wealth, after her demise? This should not be deemed admissible; for it is shown, that sons and the rest have only a title in what is technically named the property of women, and no one has propounded the right of a son, or other descendant, to such wealth belonging to a woman, *which she acquired by labour or similar means*. If this be alleged, the question being proposed, who then shall inherit such wealth belonging to a woman, since legislators have not ordained the succession of the son or other descendant? it is answered, her husband, being her master, shall alone succeed; but if he die first, the offspring of the woman shall inherit, as nearest of kin, conformably with reason. In like manner, the title of a wife in the wealth of her husband, which arises solely from *their* marriage, expiring on her death, the offspring of the husband shall alone succeed, by a text which shall be cited (CCCCLXXVII 2). It should not be argued, that the precept relates only to property devolving on remote, in default of near, heirs. That text relates to wealth, of which the property is vested by right of affinity. These lawyers thus briefly reconcile the difficulty.

But, *noticing this objection*, 'as for the right of a wife, it is declared that she has property in the wealth of her husband; she might therefore claim partition with him: but *were it so*, partition, not the prohibition of it, would be denoted by the terms of the text' (LXXXIII); **Misra** replies, "No; for she is declared to have no property" (Book III, Chap. I, v. LI). The right of the wife relates not to succession, but to sacrifice only, her title being justified by co-operation: it does not contradict the fact of her having no wealth, for that cannot be disproved by mere reasoning. But partition may take place between husband and wife, under the text above cited (LXXXIII), as is observed in the *Retnácara*.

It is the opinion of the objector, that partition might be claimed from her husband by the wife singly, without its being made with sons, because she has an interest in the estate. But the author states, as the opinion of the *Retnácara*, that partition may take place with a wife, as with sons, without a *previous* title. To this some lawyers object the capacity of a wife to possess wealth; for she does actually possess that which is technically named

female property: hence the phrase, "they have no wealth exclusively their own," does not determinately signify that she is destitute of connexion with property, but suggests a right accruing to her lord through the acquisition made by the wife; for it coincides with the text of MENU, "the wealth which they may earn is acquired for the man to whom they belong" (Book III, Chap. I, v. LII); and, in this instance, his right does not arise from acquisition, but from connexion. Yet, if the phrase, "they have no wealth exclusively their own," signify, they are not independent in regard to their own acquired property; or, if it signify, they are destitute of connexion with that which has been earned by themselves; then the right of the wife over the estate of her husband is uncontradicted. There is no authority for limiting her title.

But RAGHUNANDANA affirms, that the denial of partition, propounded by 'APASTAMBA, is understood generally. Hence this meaning is deduced; a wife cannot, like a son or brother, claim it in her own right. The special law, delivered by YÁJNYAWALCYA, contradicting that *general precept*, shows partition with a wife, at the same time with a distribution made among sons. Again, since it would not be forbidden, unless it could have been supposed, RAGHUNANDANA admits the property of the wife in the wealth of her husband, as the ground on which it might have been supposed. This should be thoroughly examined: were it so, the mother of an only son might claim partition with him, in her own right; but there is no difficulty, if it be admitted that she who has a son has no property in the wealth of her deceased husband, and consequently that partition could not *in this case* be supposed.

Others thus explain the text of 'APASTAMBA: there is no partition between husband and wife in respect of acts of religion, nor in regard to the receipt of wealth; there is no such distinction as the following, "this chattel belongs to him, not to his wife." But the division of property is not *here* intended by the term partition: it signifies the disunion of persons; and the text denies such separation, for it coincides with another which describes the wife as half the body of her husband, and thus she has an universal right to his wealth and so forth. By a special text, the husband has no title to *that which is technically denominated* the property of women; but the share which is given to her when partition is made among sons, belongs to both *husband and wife*, for it is different from the peculiar property of a woman. It must, however, be established, on *arguments derived from* common sense, that she has some independent power over it: but partition is only granted for convenience; she, who is one person with himself, can never be truly divided from him. Such is the modern mode of interpretation, following the opinion of VIJNYÁNÉSWARA.

Since the text of 'APASTAMBA also forbids the separate acceptance of wealth, partition between husband and wife is not acknowledged: as for the allotment of a share, as propounded by YÁJNYAWALCYA, its full sense is the reservation of a portion out of his own patrimony, on account of his wife, *and which portion should be* exactly equal to the share of a son. Thus the term "before partition," *or undivided*, must be considered as an epithet expressing a matter of course, so far as it relates to the married pair. Authors thus expound the law. This brief explanation may suffice.

CCCLXXXIX.

VRĬHASPATI:—A violent crime, immoveable property, a bailment, and a former partition, must be ascertained by just inference, if neither written nor oral evidence exist:

2. A forcible attempt, a mark, and an instrument of offence, are *presumptive* proofs of violent crimes; possession of immoveable property is proof of a title; and separate wealth, of partition:
3. They whose income, expenses, and wealth are separate, who reciprocally lend money at interest, and who make commercial bargains with each other, are doubtless disunited.

If there be neither writing nor witness to prove a violent crime, or any other of the four matters *mentioned in the text*, it must be ascertained by just inference. The legislator subjoins the *grounds of* presumption in the case of a violent crime: "a forcible attempt;" the use of force as the means of killing or the like: he who, before the homicide, made an attempt to slay *the deceased*, may be justly suspected of the murder. So in other cases. This, and "a mark" or token, and "a weapon of offence" or armed bludgeon, are three *presumptive* proofs of violent crimes. The possession of landed property is *a similar* argument *of a fair title:* the exceptions relative to this subject should be sought under the title of Administrative justice. In the case of bailment, the former acknowledgment, and the renewal of a deposit, or any similar circumstance, should be considered as a strong ground *of suspicion*. In respect of partition, separate wealth is *presumptive* proof: having made this a general instance, the legislator himself explains it in the third verse; those *co-heirs* whose income, expenses, and wealth are separate, who severally acquire property, and make distinct gifts and separate bailments of their effects, are disunited. Again, they who mutually lend money at interest, (who reciprocally give and receive loans,) and those who make commercial bargains with each other, (who transact purchase and sale the one with the other,) are disunited: all this relates to wealth inherited from the father or other ancestor.

If co-heirs, living together, and partaking of the same food, do such acts with the patrimony, it is *nevertheless* admitted that they are undivided: hence commercial transactions *with each other*, and the like, can be no proof of partition. If this be alleged, the answer is, then wealth acquired upon the divided patrimony, but without separation in regard to food, would belong to all the co-heirs; for the separate preparation of victuals has been already mentioned as the meaning of the term partition. In a doubt respecting a prior distribution among those who severally transact commercial affairs and the like, but without having separated their preparation of food by a previous agreement, what is the rule of decision if the dispute concern that property to which the transactions relate? Deduce the principle *of decision* from reciprocal gift and receipt; for, *in that case*, donation, which is an act *done* for a spiritual end, has been made in contemplation of abundant fruit *from liberality to a kinsman*. Again, the people know whether these co-heirs have separated their *preparation of* food by previous agreement or not. Again, do the peasants deliver to them, severally, the provisions and other dues from their village? Hence also a principle of decision may be deduced. In like manner, the question may be determined by their annual obsequies *for a deceased ancestor*, and by their worship of LACSHMÍ or other deities and the like. On this topic, JÍMÚTAVÁHANA adds, this and similar acts can only be done severally by divided co-heirs; any one of them must therefore be considered as presumptive proof of partition. It should not be objected, that, "such acts" (CCCLXXXVII) signifying many such, it is intimated that they are collective *proofs of separation*. The texts are founded on reason; and the several arguments on each being equal, presumtive proof may be admitted on failure of written and oral evidence.

CHAP. VII.

ON THE RIGHTS OF CO-HEIRS.

SECT. I.—*On their Rights after Partition.*

CCCXC.

NÁREDA:—When there are many descendants of one man, who severally perform sacred rites, make several contracts, and have different employments and different qualities, without concurring in the acts of alienation, *then, if they severally give or sell their own undivided shares, the alienation is valid.*

When many persons, though descendants of one man, do not concur in acts which denote co-parcenary, when they do not join in them, that is, when they are disunited, (but MISRA expounds it, when divided co-heirs are not re-united,) then they severally perform sacred rites, such as oblations to the assembled gods; and make several contracts, such as loans at interest and the like. "They may have different employments, &c.;" severally or different is connected with this part of the sentence, for it has no inflection because it is indeclinable: the sense therefore is, they may have different employments, or severally protect *their respective families*, and fulfil other duties; and they may have different qualities, as obedience or the like: consequently, they may severally perform all these things. Such is the opinion of MISRA. Others explain this phrase as an epithet of the agent in the sentence: the meaning therefore is, oblations to the assembled gods must be severally made by active and virtuous co-heirs; this obviates the reflection of ignorant and lazy men, "those acts are performed by our brother alone, *that is sufficient.*"

The legislator subjoins the fruit of partition (Book II, Chap. IV, v. VI).
The *Vivāda Retnácara*, and *Vivāda Chintámeni.*

According to the opinion delivered in both works, the alienation of property equivalent to his own share, by any one brother during co-parcenary, is not proper; but, with the consent of other co-heirs, division, *or separation of his own,* is evidently valid. Consequently, if any one co-heir do so, the gift, sale, or other alienation is good in law, because it is the act of an owner, and because joint property, not enumerated among things ungiven, *or void donations,* is *only* mentioned among things which ought not to be given away: but it must not be questioned whether that share, *which is alienated,* falls upon all the brethren, nor whether he shall receive an allotment out of the remaining shares of other brothers; for, in commenting on a text above cited (CCCLXXIII), it has been said, whatever is given away by any one parcener for his own purposes, without the assent of the rest, shall be deducted out of his share; and this stands uncontradicted by any author. But if any one undivided parcener aliene the whole, then

surely *the act is null.* VRĬHASPATI declares it (Book II, Chap. IV, v. XVIII 5). "Heir," *in this text*, is explained in the *Retnácara* as signifying 'son.' Divided heirs are here declared to have no power to aliene the immoveable heritage, meaning that the alienation is invalid, because it is made by one who is not owner *of the whole*. "Immoveable" is a mere instance; for the reasoning is equally applicable to gems or the like. But JÍMÚTAVÁHANA and the rest hold, that co-heirs, even though divided, have no power to give or otherwise aliene their own shares, nor that of another brother; hence a co-heir ought not to give away even his own share of immoveable property without the assent of the rest: this is founded on the sin of distressing another brother by a gift, sale, or other alienation made by a misbehaving person; but the donation is not void.

On the former opinion, why is it said, if any co-heir aliene "the whole;" for the author of the *Retnácara* has almost expressly declared, that a co-parcener's own share ought not to be given away: thus, since he permits divided co-heirs to dispose of their own shares, it is intimated, that the same is permitted to undivided co-heirs? The answer is, there is great sin in giving away the whole, but less in aliening the amount of his own share. Further inferences may be deduced by a simple exertion of intellect.

MISRA remarks, that a text formerly cited (Book II, Chap. IV, v. XXXIII) is a principle of law: the assent of townsmen, of heirs, and of kindred, *is there required* for the publicity of the gift; the assent of neighbours, for the sake of preventing disputes concerning the boundaries. But the delivery of gold and water *is also directed.* Since the sale of immoveable property is forbidden,* and the gift of land is alone applauded (Book II, Chap. IV, v. XLI): if a sale must be made, it should be done in the form of a donation, delivering gold and water: such is the *purport of the precept.*

'For the publicity of the gift;' else the heirs might dispute it at a subsequent time: "heirs" are sons and the rest, daughters and others, in short, eventual successors. Publicity *is required*, that the townsmen and *the giver's* own kinsmen may be witnesses. The phrase, "there is no sale of immoveable property," is intended to forbid such alienation of it: it is thereby intimated, that a spiritual offence is committed by selling land, not that the contract is void; for property is equally devested by the voluntary act of the owner in sale as in gift, and it occurs a hundred times in practice. It should not be objected, that, by saying "land is conveyed by six formalities" (Book II, Chap. IV, v. XXXIII), it is intimated, that real property is not devested without those ceremonies, since the term "land" would otherwise be unmeaning; and thus a sale of it without delivery of gold and water must be invalid, and the current practice contradicts the law. There is no argument to prove, that land is not transferred like gems or other effects by a sale, or act devesting property. This rule concerning six formalities is not a sufficient argument; for there is no objection to the admission of any other ceremony, as well as the delivery of gold and water, in the case of sale.

Admitting that gift is not *perfect without that formality*, must not sale be also invalid without delivery of gold and water? It should not be

* "No sale of immoveable property can be *effected without the formalities of donation*; and a mortgage must be made with consent *of co-heirs*." This anonymous text is so explained by RAGHUNANDANA, from whom the compiler has copied the quotation. T.

answered, that, although an unessential part be incomplete the principal object may be nevertheless accomplished. The delivery of gold and water can be no *constituent* member of a sale, which is a temporal act. To the question proposed some lawyers reply, a gift accompanied with gold and the delivery of water are directed to confirm the sale, lest at any time the seller take *back* the thing on pretence of a fraudulent bargain; for sale or other alienation of immoveable land, which is considered as the source of maintenance, is especially forbidden (Book II, Chap. IV, v. XII); and if it be made abominable, present evil may ensue; else is there not, without the assent of persons residing in the town, an act of the will, that this land shall belong to this man; and cannot such act of volition, having actually taken place, devest the right? In fact, the devesture of property, though past, is not presumed by the arbitrators, since the seller may be influenced by avarice, *and deny the transaction*. In like manner, the delivery of gold and water is directed to obviate litigation, *when the seller*, although the contract be proved by the evidence of kinsmen, *affirms*, "this bargain was made by me with a fraudulent design:" unless water have been delivered, the validity of the contract may be questioned, if the seller allege a fraud. Sale is incontestably effected by a simple act of volition; but formality is ordained (Book II, Chap. IV, v. XXXIII) for the sake of proof.

CCCXCI.

VYÁSA:—At a time of distress for the support of his household, and particularly for the performance of religious duties, even a single co-parcener may give, mortgage, or sell *his own share of* the immoveable estate.

"For the performance of religious duties," common to the co-heirs: alienation for these purposes is not forbidden. Immoveable property, a corrody *out of mines or the like*, and slaves *employed in husbandry*, are subject to the same rules (Book II, Chap. IV, v. XIV). This text of YÁJNYAWALCYA is founded on the consideration, that immoveable property is called the source of maintenance; consequently, the loss of the estate, or means of subsistence, *when it is aliened* with the consent of those who partake thereof, shall not be imputed as a fault. As for the practice of kinsmen, though divided, forbidding a sale of immoveable property made by a man whose general conduct is good, that is founded on a text above cited (Book II, Chap. IV, v. XVIII 5). "A single parcener has no power to give, pledge, or sell the whole;" meaning his own share and that of another brother. *But* men practice *the* purchase *of land*, paying to another brother or parcener *his share of* the price.

Even though the reason of the law be not *manifest*, landed property, though divided, ought not to be sold without the assent of co-heirs, under the authority of the text. A certain author has so remarked; and some lawyers deem this reasonable. In fact, the sale or other alienation is not valid without the consent of the co-parceners. But if the son of him who acquired the immoveable estate sell it, no other co-heir should dispose of it *again*; but the price should be duly distributed: the first contract being valid by his consent, the second is void.

To elucidate this subject by expounding the various opinions *on it*, partition with a son born after a division is again noticed *in this place*. On this subject MENU propounds a text (CI).

Sons having made a partition with the father, one born afterwards shall take the whole of the paternal allotment on the death of the father. If that parent wish to make a second division in his life-time, *the son born after partition* shall receive his due share out of the father's wealth, not out of the portions allotted to the brothers formerly separated: this is made evident by the word "only, *or alone*." Such is the exposition stated in the *Retnácara*. MISRA also delivers the same gloss; but adds, if his father die after re-uniting himself with his own brother or son, the child born after partition receives his father's share from that person. Such is the meaning of the phrase.

A son born before the distribution, that is, one with whom partition has been made, shall have no claim on the share of his father; nor a son born after it, on that of his brother. Such, according to the *Retnácara*, is the sense of a text cited from VRĬHASPATI (C). It must be understood, that the son born before partition has no claim on the paternal estate, if there be one born after it. Having propounded the law concerning the share taken by the father in his life-time, the legislator proceeds to the rule concerning wealth acquired by him after partition.

CCCXCII.

VRĬHASPATI:—All the wealth of the father acquired *by his own labour, and with his separate fortune*, shall descend, if he made a partition with his children, to the son born after the distribution; and the sons born before it are declared incapable of inheriting that property, *even though they return to the joint family.*

All the wealth of the father shall so descend after his death; in his life-time he may dispose of it at his pleasure, under the rule of VISHNU (XXV): the father's own will likewise determines the appropriation of wealth acquired by himself, even with the use of property left by the paternal grandfather. But MISRA holds, that he has not uncontrouled power over that which is acquired through the use of wealth inherited from the paternal grandfather. A remark should be here made: it must be remembered, that, according to the *Retnácara* and other works, the rules concerning the patrimony, which has descended from ancestors, must, when partition is made with a son born after a division, be observed in regard to that *portion of the* wealth inherited from the paternal grandfather, which has been received *by the father* on partition with his sons.

The legislator declares, that debts shall be divided, as well as property; "the duty of paying debts, and the right of giving, pledging, or selling, follow the property inherited," (C 2). "Pledging;" making *or accepting* a mortgage: consequently the son born after a division shall alone possess a pledge which has been given by one who received a loan from the father after the partition with his sons. These being particularly mentioned, does he *also* succeed to all civil claims, such as deposits and the rest? Resolving this question, the legislator adds, "they have no claims on each other, except to purification and oblations of water, if either of them die."

GÓTAMA ordains, "The son born after partition shall take the estate of his father." The text of YÁJNYAWALCYA contradicts this precept.

CCCXCIII.

YÁJNYAWALCYA :—After a division, a son born of a woman equal in class claims partition *of the original estate;* or a distribution shall be made of the present wealth, exclusive of *subsequent* income and *past* expenses.

"A distribution of the present wealth" is another case relative to a co-heir deficient in good qualities; consequently a son born after partition, being virtuous, shall receive his share of the whole estate, that is, of both sorts of property, forthcoming and not forthcoming; but one deficient in good qualities shall only receive a share of the present wealth, exclusive of income and expenses; that is, without including the subsequent increase, nor what has been consumed by the brethren. Again; the debts contracted by the co-heirs must be *first* paid. The shares shall be made good by the divided brethren out of their respective allotments: thus HELÁYUDHA. MISRA and CHANDÉSWARA give a similar exposition. "Equal in class" signifies equal to the father. Since he is exhibited, *by the sense of the phrase,* as the person from whom the son is born by a woman equal in class, parity with him only can be properly understood, not equality with the brother, or other co-heir, exhibited by terms subsequent in construction as the person from whom partition is claimed: thus some lawyers expound the phrase. But others explain it, a son born of a woman equal in class claims partition from brothers belonging to the same tribe; consequently, sons of the sacerdotal class having already made a partition, shall give no share to their brother of the military tribe born after it, but those who belong to this tribe shall give a share to him. The best of these opinions should be selected on *the inferences of* common sense.

Brothers being mentioned in the text of VISHNU (CII) as the persons who shall give an allotment *to a son born after partition,* may he receive a share from the father or not? No, that a son shall receive an allotment from the father alone; and if he be separate, this text is propounded to clear the doubt whether a share shall not be given by brothers. Consequently, VISHNU and YÁJNYAWALCYA have directed, that an allotment shall be received from the brothers; MENU, VRĬHASPATI, and GÓTAMA, have ordained, that the son born after partition shall not receive it from them. On this *seeming* contradiction, the author of the *Pracáśa,* CHANDÉSWARA, MISRA, and SÚLAPÁNI remark, 'if the pregnancy was not certainly known at the time of the distribution, in that case, *should a son, who was then in the womb, be born after it,* he shall obtain his share from the brothers; but a son begotten subsequently to the partition shall only obtain the estate of his father.' But if the pregnancy be manifest, no partition can be made: so the author of the *Pracáśa* and CHANDÉSWARA. Yet, if the co-heirs cannot wait so long a time, one share ought to be set apart for the child, as directed by VASISHT'HA *in the case of pregnant widows* (CXVII). But, should a daughter be produced from that conception, the share *which had been set apart* shall be subsequently distributed among those *brothers.* According to this opinion, sons already separated shall have no share of property which had belonged to the paternal grandfather, and was seized by a stranger, but is subsequently recovered; for it appears, that it should be distributed like wealth acquired by the father himself. This opinion may be thus discussed: does the title to that property subsist, even during the period of possession by a stranger? If it do subsist, co-heirs already

disunited have shares of this wealth formerly acquired: if there be no title during that period, there could be no "recovery" of property. If it be said, the right of the owner is devested through the seizure *of the chattel by a stranger*, but a title is again vested by the recovery *of it;* and that accrues to the father alone, because he is the nearest descendant *of the late owner:* the answer is, the property of it is vested in right only of the ancestor's title; sons and the rest ought therefore to participate. The seeming difficulty is thus reconciled; if such title to property be *thus* minutely examined, the father would have no independent power over it, even though recovered before partition: the point must be therefore determined by the further consideration of the father's right, as parent *of the sons*, after this mode; he, not sons already disunited, has a right to the wealth recovered by him after partition; but if it be regained by any one of the brothers, he who retrieves it has a right under the text of YÁJNYAWALCYA (CCCLII 2), and the father has a claim as son of the *former* owner: on that opinion, according to which a fourth part is allotted, he who recovers the property has a right to the quarter of it, and the rest of the co-heirs have a claim on the remainder; but the father shall receive half, for he is declared entitled to a moiety of that which is acquired by his son with the use of the patrimony: (less would be improper; more cannot be affirmed, since there is no ground for fixing *any certain greater proportion:*) whatever title the father has to certain property, he has the same right to such wealth even after a division.

But if a father, having made a partition with his sons, die after begetting another male child, and if property of the paternal grandfather, formerly seized by strangers, be subsequently recovered by any one brother, what is the rule *of distribution?* Since the equal right of all the co-heirs, after the death of the father, is proved, because they are undivided in respect of that wealth, it should be treated like effects acquired by a co-parcener. It should not be asked, admitting the same rule of distribution, in the two parallel cases of wealth recovered, and effects acquired by an undivided co-heir, by what analogy can it be rendered applicable alike to the instance of property regained by a divided, and to that of wealth earned by an undivided co-heir? The want of proof that others shall be excluded from participation therein is *a conclusive* argument. Nor should it be objected, that the observation of certain lawyers is right, that property in the chattel being devested through the seizure of it by a stranger, a title is afterwards vested, by the recovery of it, in him alone who does retrieve it. Were it so, it might become the property of any other person who recovers it: now it must be affirmed, that the right of a chattel, which is regained, vests in no other except the proprietor or his issue. But with the assent *of owners*, he who recovers it shall have a share, as is universally acknowledged; *or* the chattel shall belong exclusively to him, if the rest had no intention of claiming it. Such is the opinion of some lawyers. According to CHANDÉSWARA, he alone who retrieves it gains a title, without *any necessity of* inquiring whether the rest did or did not assent. If it be asserted, that, in such a case, should the chattel be accidentally regained by one alone, though all designed the recovery of it, the son born after a partition shall have no share of it, because the participation of all is only ordained in the case of wealth recovered by an undivided parcener: then the opinion of CHANDÉSWARA would be preferable; for, if this son do not obtain the wealth of his ancestors regained by a divided co-heir, he shall not obtain it, though recovered by an undivided parcener, since no distinction is specified by YÁJNYAWALCYA, and common sense equally opposes it. More on this subject may be deduced,

by *a simple exertion of* intellect, from what is stated under the title of Property exempt from Partition.

JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, observing it to be requisite in partition that the mother be too aged to bear more sons, as declared in the texts of Sages (XX and XCVIII), and remarking that some legislators have ordained an allotment for a son born after a distribution, hold, that brothers must give a share to one who is born after partition, if a distribution of wealth inherited from the paternal grandfather have been made by mistake when their mother was not too aged to bear more sons; but, since partition of the father's own estate may be made without requiring that the mother be past child-bearing, a son born afterwards shall take the *reserved* allotment of his father.

It should not be objected, that CHANDÉSWARA considers the cessation of the mother's periodical uncleanness as indiscriminately requisite in every case *of partition;* and the rule is thus simple: when a distribution has been made by a father, a share must be given to sons procreated though not born previously thereto; but sons begotten afterwards shall only take the exclusive property of their father: such are the two maxims. But, according to your opinion, the estate of the paternal grandfather should be divided after the mother becomes too aged to bear more sons; this is one rule: the father's own property may be divided at any time by his pleasure; this is a second maxim: sons born after partition shall take their father's *reserved* share *of his own estate*, and receive, even from their brothers, a portion of the property left by the paternal grandfather; these constitute four* maxims. There is consequently one more rule than in the exposition of CHANDÉSWARA. *This should not be objected;* for the precept concerning the succession of a son born after partition to the *several* estate of his father, would be irrelevant, since a child cannot be procreated on a woman after she has ceased to menstruate. It should not be answered, that the texts of VISHNU and YÁJNYAWALCYA would thus also become irrelevant. They are pertinent, since a son born of a pregnancy not manifest *at the time of partition*, claims *a share of* the estate of his paternal grandfather.

According to the interpretation of JÍMÚTAVÁHANA and the rest, there is no poverty of meaning in the texts, but the rules are numerous. According to the opinion of CHANDÉSWARA, the precepts (CI, &c.) relate to the case of a partition made by mistake, or to that of a son born of a marriage subsequent thereto. Although the father's passion was extinct *when the division was made*, it is recorded by ancient authors, that desire has, *in many instances*, been revived by potent drugs or the like. This and other inferences may be trusted. Such are the distinctions; and more on this subject may be established by *a simple exertion of* intellect.

SECT. II.—*On the Share of a Parcener living abroad, and returning after Partition.*

CCCXCIV.

VRÍHASPATI:—Whether a partition be or be not made, whenever an heir appears, and the property descended to parceners, he shall receive his share:

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* So the manuscript; but the number should be three. T.

2. Be it debt, or a written contract, or a house, or arable land, that descended from his grandfather, he shall take his due share of it when he comes, even though he had been very long in a foreign country.

3. If a man leave his joint family, and reside in another province, his share must undoubtedly be given to his male descendants when they appear:

4. Be he the third person, or the fifth, or even the seventh, *that is, in the second, or fourth, or even in the sixth degree*, he shall receive the share that gradually descends to him, on full proof of his birth and family name.

5. To the descendants, when they appear, of that man whom the neighbours long settled on all sides know by successive tradition to have been the proprietor, his kinsmen shall give possession of the land.

If one son of the common ancestor go to a foreign country, and he and his offspring stay there, but the posterity of the other sons remain at home divided or undivided, then, should the descendants of him who went to a foreign country return, the rest shall give them a share *of the heritage*. In such a case, the form of distribution is this: one share, computed according to the number of sons left by the commom ancestor, shall be received by the descendants of him who went to a foreign country, and be distributed amongst them in right of their respective fathers; but if they return after partition, the rest must contribute their due allotments out of their own several shares.

"And the property descended to parceners:" what is liable to partition, not wealth acquired by any one of the co-heirs through his own exertions, shall be shared. "Debt;" meaning indiscriminately money lent and sums borrowed by their own ancestors.

"A written contract;" the patent for a corrody or the like.

"If a man leave his joint family," (or the joint property of the family), not abandoning it, but making no claim thereon, his share of the debts, and other things above mentioned, must be given to his male descendants. Such is the interpretation of BHAVADÉVA; but RAGHUNANDANA holds, that a share of any joint property must be given. In effect both opinions are right; for gems and the like acquired by ancestors can hardly remain after a long time, *but have probably been dissipated*. "Be he the third person," or grandson of the common ancestor: or "the fifth," that is, the son of the great-grandson; mentioned because he is the fountain whence proceeds the stream of disqualified persons: "or even the seventh;" mentioned to close the sense, *and exclude a remoter descendant;* for the eighth is not entitled to participation.

It should be here remarked, that the right of the fifth or remoter descendant supposes his father, or great-grandfather, or other predecessor, to have been living when the common ancestor died, for otherwise he would have no claim (CCCLXX). Does it not follow, that the eighth or remoter

descendant would also have *such* a right in the case of his ancestors having died successively, the son after the father? No; for, although such a claim be possible, his property is devested by the adverse possession of another; and the text of the legislator *excepts him.* Since the law (Book I, v. CXIII) expresses, that "he who sees his land possessed by a stranger for twenty years, without asserting his own right, loses his property therein," it is thus ordained, that persons who see *adverse possession* alone forfeit *their title;* does it not follow, that men who have gone to a foreign country do not lose *their property?* Persons who see *adverse possession* forfeit *their title* after the lapse of a very long period, for relinquishment is thus inferred; if he do not abandon it, why does he not claim and recover it? Accordingly, RAGHUNANDANA, commenting on the text of VYÁSA (CCCXCV), observes, this precept, relating to usucaption in the absence *of the proprietor,* does not contradict the texts relating to adverse possession during twenty years in the presence *of the owner.*

CCCXCV.

VYÁSA:—Occupancy during twenty years, unmolested by the owner, is *considered as* possession of land during one generation; twice as much during two:

2. Thrice as much during three; and, in this instance, proof of a fair title is not required.

This possession during three generations devests the property of persons unallied *to the occupant;* but *it does* not *annul the rights* of those who are related to him within the degree of a *sapinda.* Hence, on the return of parceners, down to the seventh in descent from the common forefather, they obtain *shares* of the property inherited from the paternal ancestor. VRIHASPATI expressly declares it:

CCCXCVI.

VRIHASPATI:—A possession by strangers for three generations, gives, no doubt, an absolute title; not a possession by kinsmen within the degree of *sapindas:*

2. The property of a house, arable land, a market, or other immoveables, which are possessed by a friend, or a near kinsman in the male or female line, who is not the proprietor, shall not be lost *to the rightful owner:*

3. Nor shall the husbands of daughters, nor learned priests, nor the king, nor his ministers, acquire a title even by a very long and quiet possession.

Relation within the degree of a *sapinda* here signifies that in which impurity is caused by the death of a kinsman, and which extends to the seventh person, *or sixth degree of ascent or descent.* By "kinsmen" are meant those who sprung from the same family: this has been already mentioned, and is subsequently repeated. In the second verse, one term signifies *kinsmen in the female line, as* a daughter's or a sister's son and the like; the other signifies kinsmen *in the male line,* including the seventh in descent from the common ancestor; for the word is so employed in a

text of BAUDHÁYANA (CCCXCVII). In the third verse, the first term signifies a daughter's husband.

DÉVALA describes a learned priest (Book II, Chap. II, v. 20); he who studies one *śác'há* of the *Véda*, either singly, or with that body of learning derived from the *Véda*, which is called *calpa*, or the law of sacrifice; or one *śác'há*, with the six bodies of learning, grammar and the rest; and who is assiduous in performing the six prescribed acts, that is, who worships the deities, gives something *to the poor* according to his ability, and reads the *Véda*; (these three acts are relative to another world; three *others* are means of subsistence, namely, assisting *others* to sacrifice, teaching *them* to read the *Véda*, and accepting the gratuity thereby obtained as well as alms): a priest, we say, who studies the *Véda*, and does not wilfully neglect the rites enjoined therein, is called *śrótriya*. Here the study of the *Véda* is the cause; and assiduity in the performance of the six acts consists in the strict observance of its precepts. Accordingly GÓYÍCHANDRA derives the word *śrótriya*, signifying " one who reads the scripture," from *ch'handas*, (*scripture or holy verse*), by substituting the synonymous term *śrótra* with the suffix *iya*. He who omits the acceptance of gifts, but is endued with the other qualities *above mentioned*, is nevertheless denominated *śrótriya*. It should not be objected, that assiduity in the performance of the six acts is mentioned to regulate the means of subsistence, not as a condition absolutely required; and consequently he alone is called *śrótriya* who pursues no other means of subsistence, but asisting others to sacrifice, teaching them to read the *Véda*, and accepting gifts *from a pure-handed giver*. Were it so, a man *endued with* such *qualities*, and subsisting by lawful gleaning and gathering, would not be a *śrótriya*. Accordingly the wise recite.

In right of his birth, he is considered as a *Bráhmana;* in right of investiture and other regenerating ceremonies, he is called twice-born; by learning, he attains priesthood: by these three, a *śrótriya* or learned priest is distinguished.

By these three, namely, by birth, by regenerating ceremonies, and by learning, a *śrótriya* is distinguished; or priesthood, the characteristic of a *śrótriya*, consists in these three: consequently a *Bráhmana*, conversant with the *Véda*, and invested with the mark of his class, is a *śrótriya*, or learned priest. Such is the definition; and assiduity in the performance of the six acts is a quality or epithet intended to forbid inferior means of subsistence. Even they who have studied any single part of a *śác'há* of the *Véda*, and are not degraded by following any *irregular* profession at their pleasure, are acknowledged to be *śrótriyas*, or learned priests. Accordingly MENU, on the subject of Succession to the estate of one who leaves no male issue, ordains, that the property of him who leaves no male offspring shall be given to a priest who has read the three *Védas*, and is endowed with virtue consisting in *mental* purity (CCCCXLII); and DÉVALA directs the delivery of it to learned priests (CCCCXLV). Consequently, on the concurrent authority of both legislators, from the etymology of the term, and by virtue of ancient traditional maxims, a *Bráhmana*, who has studied any one of the three *Védas*, is evidently a *śrótriya*, or learned priest.

Thus some lawyers expound the law; but, in fact, whatever be the definition of *śrótriya*, he who is venerable on account of his reading the *Véda* or the like, does not acquire a title even by a very long quiet possession: (and this supposes a proprietor different from the king; but the case of the

sovereign being owner is discussed under the title of Duties of Kings.) This we deem reasonable: and the rule for a share to be received even by the seventh person *in descent from the common ancestor* relates to one who resides in a distant country; in contemplation of this, it is said, *the property of immoveables possessed* by a kinsman *who is not the owner, is not lost*. The precept of DÉVALA (LXXXI) must be considered as relating to one who resides in the same province. Thus, one son of the common ancestor lived at some place other than his father's house or the like, and enjoyed wealth acquired by himself, and so forth; his son, having also resided there in a similar manner, dies; another son and his issue remained in the house of the common ancestor, and possessed the estate of that forefather: afterwards, when the grandson of him who resided at a different place of abode, claims a share of the estate inherited from ancestors, he shall have it; but if he die, and his son claim a share, this remote descendant shall not obtain it. Such is the sense of the text of DÉVALA. How can the seventh in descent from the common forefather be entitled to the succession? Because it is the heritage of his near ancestors; for, although they have not possession, which is another mode of acquisition, they gain a title to that property by birth, under the text of GÓTAMA (Chap. I, Sect. I, Art. I).

Does not the precept (LXXXI) signify, that partition of the whole estate among undivided parceners, or of a small residue among divided coheirs living together or residing in the same province, extends to the fourth in descent from the late owner? (but second partition is only pertinent as it relates to divided co-heirs; or "living together" may signify re-united:) if a son then, separated from his father, die during the life of that parent, his son and grandson also dying before his father, and if none but a great-grandson of the son exist when the parent subsequently dies, he shall not obtain a share of wealth remaining undivided: it is the same even though co-heirs have different abodes after re-union. But as for the opinion that partition extends only to the brother, his son, and the son of that son, even when coheirs, whether undivided or reunited after partition, die successively, *the son after the father*; and that no partition can exist beyond these with the great grandson of the late owner's son; may it not be asked, to whom then would the property belong? The literal sense *of the precept* may be offered in reply; it belongs to the offspring of him who survived when one of two brothers died: but arguments from reasoning are not sought in this case; for, the several ancestors dying successively, and the property not having been silently neglected during adverse possession, nothing prevents the transmission of it even to the hundreth degree of lineal consanguinity. It should not be affirmed, that this sense is established on the authority of the text. RAGHUNANDANA and the rest have not expressly stated such an interpretation of the law; and the text may be otherwise expounded. Again; if two brothers, having gone on a pilgrimage to bathe at a holy place, die unknown to the rest, then, since it is undetermined who deceased first, and who last, both their great-grandsons, though undivided parceners, would be deprived of their shares, because they are more remote from the proprietor than the fourth in descent.

Does proprietor signify the acquirer of the wealth, or simply the owner of it? If *it bear* the first *sense*, two uterine brothers could not divide wealth descending from ancestors, which was acquired by the great-grandfather of the grandfather; for they are more remote from the original acquirer than the fourth in descent. It should not be argued, that the precept relates to the case where no partition has been made from the time when the acquirer

lived *to the present moment*. The sense of the text does not extend so far. It should not be replied, such an inference may be drawn from the use of the term "parceners" in the plural number. Still nothing would prevent partition with any one male descendant when property, which has been *regularly* divided by *the heirs during* four generations following the acquirer, is held in co-parcenary by the fourth in descent from the fourth person, provided the demise was regular *in each generation, the father dying before the son.*

If it be said, the second meaning must be admitted; and the sense in effect is, that if partition have not been made among any owners during three successive generations, a division shall not be made in the fourth: the answer is, "fourth in descent" must be referred to some origin; but this text would be unintelligible, since it is difficult to find the source to which that term refers; for, if the meaning be 'fourth in descent from the owner of the property,' then, since undivided parceners also have common ownership, partition may extend to the hundredth descendant, provided demise were regular, for he is not more remote than the third in descent from an owner of it. If it be said, the term is referred to a sole proprietor of the wealth, then, in the case of co-parcenary during five successive generations, it would become a waif, although demise were regular in each degree; or it would be taken by the person who should be heir on failure of male issue. If it be said, the property devolves on the issue of him who died last of two brothers, the answer is, No; for he was not sole owner independent of his nephew. It should not be said, the determinate sense is fourth in descent from a sole owner and common ancestor. There are no grounds for such an inference. Thus some expound the law; but this should be examined.

Others hold, that the right of parceners residing in a foreign country extends to the seventh person, even though demise have been irregular in three generations; and this appears from the remark of RAGHUNANDANA, after citing the text of CÁTYÁYANA (LXXIX), 'this relates to parceners living together.' That opinion is not satisfactory; for it is established generally, that a son, a son's son, whose own father is dead, and a son's grandson, whose father and grandfather are dead, succeed to the estate of the proprietor; a different rule in regard to persons residing abroad is not established. It should not be answered, the right of persons residing in a foreign country extends to the seventh in descent, under the text of VRĬHASPATI (CCCXCIV 4). The implied sense of that precept denies the forfeiture of property unpossessed by co-heirs residing in a foreign country. But the rights of parceners remaining in their own country are forfeited by dispossession beyond the fourth in descent, under the text of DÉVALA (LXXXII). It should not be objected, that the law declares the right of inheritance to extend to the fourth person. There is no argument on which that sense can be also rejected. It should not be urged, that, as the property of strangers is devested by want of possession, so are the rights of near kinsmen also forfeited by dispossession during sixty years; but, since a text declares the right of inheritance of parceners residing in a foreign country to extend to the seventh person, it is of course true, that their title is not lost even though they have not had possession during sixty years. VRĬHASPATI specially ordains, that the rights of kinsmen shall not be forfeited by want of occupancy (CCCXCVI 1). Does it not follow, from the text of VRĬHASPATI, that the property of kinsmen is not forfeited, even though unpossessed during a hundred generations? This law is so explained by CHANDÉSWARA and the rest: after expounding a text of DÉVALA, CHANDÉSWARA, citing a precept (LXXXII) with the word "so" premised, proves it to be a law of

DÉVALA: it would therefore be a vain repetition of the preceding text (LXXXI); and it would be troublesome to establish different causes of property in wealth inherited from ancestors, on a distinction between the offspring of one who resided in his own, and of one who lived in a foreign country. It should not be objected, 'since thou dost establish dispossession to be a cause of forfeiture, it is equally troublesome to prove different causes thereof on a distinction between persons residing in their own and in a foreign country.' Forfeiture is not an immediate consequence of dispossession *during a certain period.* Does it then become a mediate cause of forfeiture? Silent neglect annuls a title, and dispossession proves that neglect. Accordingly the property in an *aswatt'ha* tree or the like, acquired by the party himself, is not forfeited, even though it be unoccupied during a long period.

The law may be thus briefly recapitulated: a son, a grandson, and a great-grandson, succeed to the estate of a father, of a paternal grandfather, and of a paternal great-grandfather, on their decease; if co-heirs, residing in their own country, take not their shares during three generations, the right is lost to their descendants; but it is lost to the posterity of co-heirs residing in a foreign country, if the seventh in descent claim not *the share.*

If a kinsman possess the several property of another, related to him within the degree of a *sapinda,* and three generations of owners do not claim it, what shall be the consequence? Some lawyers reply, the title is not lost: for VRĬHASPATI declares generally, that wealth, joint or several, possessed by kinsmen, is not lost *to the rightful owner:* however, the claim on undivided property is forfeited in the case of silent neglect during three generations; as appears from the word "succession, *or partition,*" in a text above cited (LXXXII).

A son, a son's son, and the son of that grandson, not the son of this great-grandson, succeed to the estate of a proprietor; if then the son, his son, and the son's son, die during the life of the owner, and leave a son of that great-grandson, afterwards, when the proprietor dies, his wife succeeds to the estate, although a son of a great-grandson exist: but if the owner decease while the great-grandson is living, and this heir subsequently die, the estate devolves on his son, in right of the property vested in him. Such in effect is the meaning. Consequently, if the son of a grandson go to a foreign country, after the son, and son's son, have deceased during the life of the proprietor, and if no intelligence be received of his health, then, the owner afterwards dying, the son of the great-grandson, presuming his father's death when twelve years have elapsed *without receiving news* of the absent person, has performed his obsequies: *now* the son of the proprietor's daughter, who resided in another province, learning the death of his own maternal grandfather, and the presumed decease of the great-grandson of that ancestor, comes and claims the estate of his maternal grandfather; and the son of the great-grandson also claims it as the patrimony of his father: what is the rule of decision on this litigated question? The title either of the daughter's son, or of the great-grandson, on the death of the proprietor, is a matter of doubt; because the right of her son is not ascertained without proof of the great-grandson's prior demise; and the title of this heir is not ascertained without evidence of his being then alive *when the proprietor deceased.* It should not be answered, the right of the daughter's son must be adjudged, because the certainty of the great-grandson's title could alone debar him; but in this case no such certainty exists. It is simpler to admit the great-grandson's title as of course debarring the daughter's son, *though not certainly*

known; for there is no argument to prove that the positive knowledge of it is required. It should not be said, the want of any ground of choice, on other constructions, is alone a sufficient argument in this case. Were it so, the succession of the daughter's son taking place on the *supposed* certainty of the great-grandson's demise, this male descendant would have no right *to the inheritance* should he afterwards happen to return; there is no argument on which the right of the daughter's son could be subsequently annulled, and property vested in the great-grandson; and this would become a case of difficulty. Has not the daughter's son a sole right, since the great-grandson has no valid title, under a text cited by RAGHUNANDANA (CCCLXXXIV), because he has not possessed the estate? If the great-grandson die on the day immediately following the demise of the proprietor, his son would in this case also have no title to the succession.

On this subject it is said, since the text expresses "property which a man has accepted unmolested by another," acceptance alone justifies a title; hence, even without possession, if he do accept it, the estate becomes the property of the great-grandson, and afterwards devolves on his son: and this is reasonable; *for*, as neglect annuls a fair title, and bars an incomplete one, so does acceptance justify an imperfect title. Accordingly, the great-grandson gains a right to an *aśwatt'ha* tree or the like acquired by his paternal great-grandfather. Thus, if the great-grandson, being afflicted by disease, and insensible at the time of his great-grandfather's demise, do not accept the estate, and die immediately afterwards, the exclusion of his son is acknowledged, for the great-grandson is then dead. In like manner, exclusion is also admitted, if he be then afflicted with present insanity in a high degree. But, according to the opinion of those who assert the title of the great-grandson in right of birth alone, under a text above cited (Chap. I, Sect. I, Art. I,), his son may in this case succeed to the estate. This should not be affirmed; for, if the great-grandson die during the life of the proprietor, to exclude the son of that descendant, it must still be affirmed that acceptance without possession taken by an owner is requisite.*

Thus some lawyers expound the law: but that is wrong; for, a doubt still remains unsolved, whether the heir, who resided abroad, being then alive, and anyhow learning the demise of his paternal great-grandfather, did or did not accept the succession. As for what is argued, that a fair title is not gained without acceptance, that is also wrong; for, acceptance is only mentioned as it disproves silent neglect. Accordingly the heir, discovering, after ten or fifteen years, a chattel appertaining to his father, but unknown at the time of that parent's demise, may justly take it. Others hold, that, in consequence of doubt, the son of the great-grandson, and the son of the daughter, shall of course take equal shares.

MENU declares the right of succession to extend to the great-grandson (CCCLXX). To three, to the father, the paternal grandfather, and great-grandfather, water must be given in the form of an oblation; for three, for the father and the rest, is the funeral cake ordained in the double set of oblations; the fourth in descent is the giver of funeral cakes and water to them, namely, to the father and the rest: (the text must be so supplied.) A precept ordaining the gift of funeral cakes being inserted under the title of Succession to Heritage, the benefit conferred *on ancestors* by descendants, down to the great-grandson, is exhibited as the ground on which they inherit

* Because the collateral heir, not having a title by birth, must become owner by acceptance, to the exclusion of a remote lineal heir, who claims in right of birth. T.

the estate. The succession of a son and grandson born in lawful wedlock is declared by a text *formerly cited* (XI).

Again; if there be the son of a son born in lawful wedlock, and a son adopted through donation, *then*, no son of the body or other superior claimant being left, the son given has a title as ordained by law, and the son's son has the same claim with his father; and if male issue born in lawful wedlock, and the son of a son given, survive, that grandson shall take the same allotment with such an adopted son, under the text of CÁTYÁYANA (LXXIX 2). That a son given, being deficient in virtue, shall not take the estate of the paternal grandfather, is an exception to be deduced from a text formerly cited (CXC 2). At present, the son of a wife legally appointed, and other inferior sons, succeed to the estate of a paternal grandfather, or other ancestor, who leaves no surviving male issue: to show this, the legislator propounds the text (CCCLXX). It is therefore proper that sons, improperly so called, should succeed to the estate of a paternal grandfather leaving no surviving male progeny; and it is declared by an express law (XI), that the son of a son born in lawful wedlock shall share the estate of a paternal grandfather, who outlived his male offspring; for the text is so expounded by CULLÚCABHATTA. Consequently, as "son," *signifying male issue*, includes the great-grandson, so "father" (CXC 2) includes the paternal great-grandfather. Such is his meaning.

If the son given possess little, and his son possess much virtue, what is the rule of adjustment? In fact, the good qualities of him who actually takes a share, should alone be considered; as in the case of a blind son, *whose offspring, being virtuous, shall take the heritage*. At present, a third part is allotted to a son given, without inquiring his good or bad qualities; the same should also be allotted to his male issue, *if he be dead*.

CCCXCVII.

BAUDHÁYANA:—The paternal great-grandfather and grandfather, the father, the man himself, his uterine brother by a woman of equal class *with the father*, his son, his son's son, and the son of that grandson; all these, partaking of undivided oblations, Sages pronounce *sapindas*, or near kinsmen allied by funeral cakes; those who share divided oblations, they call *saculyas*, or distant kinsmen allied by family: male issue by males being left, the estate of the father surely must go to them; on failure of *sapindas*, the spiritual teacher, the pupil, or the priest *usually* employed at sacrifices, shall take the estate; on failure of them, the king.

"Partaking of undivided oblations," (*avibhacta dáyáda*), here bears various senses. That which is offered (*díyaté*) is an oblation (*dáya*); meaning the funeral cake. They who eat that, which is an undivided offering, are persons partaking of common oblations. By the word "undivided" is signified the eating of the funeral cake together. He who becomes an eater of a funeral cake with another, is (*dáyáda*) an eater of the oblation presented to him: this is a settled rule. Thus the great-grandson tastes a funeral cake with his father, paternal grandfather, and great-grandfather, at his own *sapindana* (or first annual obsequies) performed by his own son: the great-grandson is therefore a *sapinda;* but the son and grandson

certainly are so: in like manner three ancestors, the father and the rest, are also *sapindas*. But JÍMÚTAVÁHANA likewise says, a son, a son's son, and son's grandson, are *sapindas*, because the funeral cake is offered by them. Consequently, they who well (*á*) present (*dadati*) a common oblation (*dáya*) or funeral cake, are persons offering undivided oblations (*avibhacta dáyáda*). By the word "undivided," the funeral cake of the double set is suggested. Again; uterine brothers, presenting undivided oblations, will offer a funeral cake to undivided, *that is, to the same*, manes. Consequently, a man likewise offers a funeral cake to those *manes* to whom his uterine brothers also present such oblations. "Undivided" alludes to the persons to whom the funeral cake is offered. He who gives one to them, who likewise receive such offerings from another person, is (*dáyáda*) his fellow in the presenting of oblations. Such in effect is the meaning. Again; they who eat the undivided oblation of a man, that is, the funeral cake in the double set offered by him, are his *sapindas*. Thus the father, the paternal grandfather, and great-grandfather, are so denominated.

Would not a brother by a different mother, a paternal uncle, his son, grandson, and others, be likewise *sapindas? The answer is*, what difficulty follows? Uterine brothers are mentioned in the text to exhibit a portion of the subject. Would not the son of a daughter likewise be a *sapinda?* There is no difficulty, his relation by the funeral cake not being such as gives *him* a title to take the heritage.

Or the term *avibhacta dáyáda* may be explained in a single sense: for they taste an undivided oblation; and three ancestors, the father and the rest, eat an undivided funeral cake with three descendants, the son and the rest at the *sapindana* or first annual obsequies: and "undivided," as an epithet of oblation, signifies that it is to be eaten by manes, who *also* taste an oblation to be partly eaten by *the proposed person* himself. Other descendants of the paternal great-grandfather are thus comprehended in the same term; and the mention of "uterine brothers" suggests this interpretation. That expression of BAUDHÁYANA is indefinite; it is employed to announce what is of course true in the chief instance. If the paternal great-grandfather was degraded, the descendants of his father are thereby excluded: and in like manner, the son of a daughter and others may be excepted. There is no difficulty if a daughter, whether married or unmarried, be not considered as a *sapinda;* for she may inherit her father's estate on the sole authority of a *special* law.

"By a mother of equal class:" this is merely intended to declare pre-eminence. "Those who share divided oblations:" this is the converse of the former term. He who only eats a funeral cake at a double set of oblations not offered by a certain person, he who offers not a funeral cake to those manes who receive one from that person, he who does not eat a funeral cake with another, or he who offers not a funeral cake to another, is his distant kinsman sharing divided *or separate* oblations: *the one* eats a divided offering, that is, an oblation different from that which is presented by the person in question; *another* is divided or *separate*, that is, he eats not a funeral cake with that person; *a third* gives a divided funeral cake, that is, he offers one, in the double set, to be received by other manes; *a fourth* presents a funeral cake to other manes than those who receive such offerings from the proposed person. Here division, like partition of property, must be understood as signifying secondarily the separation or disjunction of persons to whom funeral cakes are offered.

"Male issue by males being left:" among the *sapindas* mentioned, issue of the body being left, the estate, that is, the heritage, shall go to them. The plural number being employed, many descendants of the person proposed are understood in this phrase. The co-ordinate right of a son, a son's son, and a son's grandson, is thereby suggested; but the grandson, or other descendant, whose own father is living, is debarred by the concurrent text of CÁTYÁYANA. That is not right; for, were it so, the son of a daughter would also have a co-ordinate title with a son (*since he also is issue of the body*). The title of a son, grandson, and great-grandson in the male line is therefore suggested by this text; and their co-ordinate rights are deduced from the text of CÁTYÁYANA. Or the funeral cake to be offered by the son of a daughter, and other descendants *in the female line*, to a maternal grandfather or remoter ancestor, is secondary, as it accompanies the oblations which the father and other ancestors of the male line receive: the son of a daughter is not therefore equal to a son *of the body*; hence he has no co-ordinate title to take the heritage.

On failure of male issue by males, kinsmen within the degree of a *sapinda* have a right to the inheritance; and on failure of *sapindas*, a distant kinsman or *saculya*: this is evident from the text, and shall be subsequently considered.

The nearness or proximity of kinsmen is a requisite condition under the text of MENU (CCCCXXXIV): consequently, he who is nearer of kin to the proprietor, in comparison with another, shall alone take the inheritance, to the exclusion of that remoter kinsman; or he who is nearer of kin to the late proprietor than any *other* living claimant, shall take the estate left by him: does it not follow, that the grandson, whose own father is dead, has not a present title, since he is more distant than the surviving son? The answer is, this text relates only to the claims of *sapindas*: a son's son has a right of succession merely as he is the *perpetuated* body *of his ancestor*: and he *really* did spring from the person *of his grandfather*; for a text expresses "the bodies of ancestors are born again of her" (CXCVII). Although the legislator, having declared three, the son and the rest, to be *sapindas* (CCCLXX), seems to ordain the succession of him among them who is nearest of kin (CCCCXXXIV); and *although* this text do not allude to the *sapindas* described by BAUDHÁYANA (for it is propounded by a different Sage); still the following rule of decision must be established, to reconcile it with the texts of BAUDHÁYANA and CÁTYÁYANA: he among *sapindas*, (meaning those who are noticed by the same legislator, namely, the son, grandson, and great-grandson in the male line,) who is nearer of kin than any other living claimant, shall take the estate; but the grandson, whose father is dead, is not more distant than his surviving uncle, for he belongs to another line of descent. Thus some expound the law. But CULLÚCABHATTA holds that this text would be superfluous, if it solely related to such *sapindas* as are *lineal* descendants born in lawful wedlock and the like; it must be therefore intended to authorise the succession of a wife and others not mentioned *by the legislator*: to the nearest *sapinda*, male or female, the estate of the deceased shall belong. Here that term intends such as have been mentioned by BAUDHÁYANA; and a wife must be considered as a *sapinda*, because she assists *her husband* in the performance of religious duties.

CHAP. VIII.
ON COLLATERAL SUCCESSION.

SECT. I.—*On Succession to the Estate of a Housekeeper leaving no Male Issue.*

1. A son, a son's son, and the son of a grandson, have a fair title to the estate of a *deceased* proprietor, *although the grandson and great-grandson be* more distant than the surviving father or paternal grandfather of the late proprietor: but who shares the heritage on failure of them? In reply to this question, the texts of YÁJNYAWALCYA and others are cited.

CCCXCVIII.

YÁJNYAWALCYA:—A wife, daughters, both parents, brothers, their sons, kinsmen sprung from the same original stock, distant kindred, a pupil and a fellow student in theology;

2. On failure of the first of these, the next in order shares the estate of him who has gone to heaven leaving no male issue: this law extends to all classes.

"Leaving no male issue;" leaving no son, grandson, or great-grandson in the male line capable of inheriting. JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, deliver nearly the same exposition. In the first place, the wife is heir to the estate of such a deceased proprietor: that is the meaning; and VRĬHASPATI also declares it.

CCCXCIX.

VRĬHASPATI:—In scripture, in law, in *sacred* ordinances, in popular usage, a wife is declared by the wise to be half the body *of her husband*, equally sharing the fruit of pure and impure acts:

2. Of him whose wife is not deceased, half the body survives; how should another take the property while half the body *of the owner* lives?

3. Although distant kinsmen, although his father and mother, although uterine brothers, be living, the wife of him who dies leaving no male issue shall succeed to his share:

4. *Since she was* previously espoused in due form, she must support the consecrated fire; and after the death of her husband, the widow, faithful to her lord, shall take his wealth: this is a primeval law.

5. Taking his effects moveable and immoveable, the precious and base metals, the grain, liquids, and clothes, let her cause the several *śráddhas* to be offered in each month, in the sixth, and at the close of the year:

6. **With food consecrated to the gods and the manes, let her honour paternal uncles, spiritual parents, daughter's sons, the offspring of her husband's sisters, and his maternal uncles, learned men, unprotected persons, guests, and females of the family.**

In the *Véda*, in codes of law, in *sacred* ordinances, the wife is pronounced one person with her husband; both are considered as one. So likewise in popular usage, that is, in the practice of men, a thing being delivered to the wife, it is a valid gift to the husband; and a thing being received from her, it is a valid receipt from him: in these and many other intances the practice occurs. "Equally sharing the fruit of pure and impure acts;" *equally interested* in maintaining the consecrated hearth and the like, and in acts justified by the nuptial fire. Such is the explanation given by authors. "Although his father and mother and near kinsmen be living:" this is *merely* illustrative, comprehending daughters and the rest. "Leaving no male issue;" leaving no great-grandson or other nearer descendant in the male line: such is the sense.

If the wife be half the body of her husband, may she not exclusively take his wealth, although sons or other male descendants be *living?* No; for it appears from *the words of* SANC'HA and LIC'HITA, "the bodies of his ancestors are born again of her, let him figuratively address his own soul in the person of his child" (CXCVII), that a son or other male descendant is consubstantial with the father or other ancestor.

"Let her perform the *śráddhas* in each month, and in the sixth, and so forth:" the text should be so supplied. The double set of oblations must not be offered, because women are forbidden to perform this rite: consequently, the *śráddha*, and honour shown to paternal uncles and the like, being mentioned under the title of Inheritance, she is only competent to the performance of those rites which are specified. But CHANDÉSWARA remarks, 'some hold, that a woman may offer the double set of oblations; to forbid that, the legislator enumerates the *śráddhas*, "in each month, in the sixth, and so forth." By the word "month" are suggested the *śráddhas* offered in twelve *successive* months; by the term "sixth" are suggested two *śráddhas* celebrated in the sixth month, *one* before the expiration of it, *the other performed as usual;* the term "and so forth" includes the first annual obsequies, and the anniversary *śráddha* to be performed yearly: hence she must celebrate no other obsequies; else those *other śráddhas* must be authorized by other texts; and this precept would be unmeaning.'

Since a double set of oblations is offered in the first annual obsequies, RAGHUNANDANA and the rest hold, that the performance of this rite by a woman must be deduced from a special text, expressing, that the first annual obsequies by *sapindas*, and the anniversary *śráddhas*, may also be performed by a woman.*

* Sixteen *s'ráddhas* must be performed for a *Bráhmana* recently deceased. The first on the day immediately following the period of mourning; twelve monthly oblations; one additional *s'ráddha* before the expiration of the sixth month; another before the expiration of the year; and lastly, the *sapindana*, or first annual obsequies, performed on the anniversary of his death. Thenceforward, obsequies should be annually celebrated for an ancestor on the date of his death, besides monthly *s'ráddhas* and other ceremonies directed by MENU in the third chapter of his Institutes. See MENU, Ch. III, v. 247. In *Mit'hilá*, and some other provinces, the obsequies for a *Bráhmana* recently deceased are abridged, and by a fiction completed on the second day after mourning. T.

"Learned men, unprotected persons, guests, and *females of the family*;" the first term signifies versed in science, for it is exhibited in the Dictionary of AMERA among the Synonyma of learned. "Females of the family;" the widows of her husband's sons, and the rest. Daughters of her husband's sisters, if destitute of protectors, are included under the term "unprotected persons:" the support of them is only necessary if they be so circumstanced. Consequently, all this should if possible be done at the charge of her husband's estate; otherwise (*if the funds be inadequate*), it must be done in words only: it is not necessary that she should deprive herself of the means of subsistence, to support the uncles and other relations of her husband; nor should she, for that purpose, do what is unauthorized by the law. But her husband's father and mother, being old, must be maintained, even though the utmost distress ensue: for her husband was authorized by a text of MENU (Chap. VI, Sect. II, Art. I,) to use irregular means for the support of his father and mother, and the rest.

On this some remark, the practice of this country goes farther; but, however intelligent he may be, a man cannot contemplate *every possible case.* Some *Bráhmanas* spring from a dignified race; those who give daughters in marriage to them, are exalted with their own lineage; if they do not dispose of their daughters to such persons, reverence is withdrawn: these *Bráhmanas* accept damsels in marriage from many families, but neither maintain those wives nor their offspring. Such being the notorious practice, if her husband have died after giving a daughter in marriage to a man sprung from a noble family, and that daughter, though virtuous, be not supported by her own husband, (for, according to general practice, he is only bound *to support his wife*, if his father-in-law, with the generosity of his ancestors, allot food and apparel to that wife, and, means permitting, *give* land or the like for her future maintenance;) that daughter must, if possible, be supported by her mother: else, how shall she subsist like an unprotected person, although she have a protector? This very practice is also proper in respect of the daughter of her father-in-law; for the dignity of her husband was raised by such act of her father-in-law (*bestowing his daughter on a man of noble birth*). The grand-daughter in the female line must, if possible, be likewise maintained; for she also is such *as is a daughter*; and persons of noble birth must give their female children in marriage to men born of noble families. This practice, founded on the rank established by the mighty prince BALLÁLA SÉNA, has been adopted by great personages. Though not found in codes of law, it is noticed *in this place* to explain the *subsisting* practice. It should be examined by the auspicious *learned*. *Hence*, either these women must be comprehended under the term "females of the family;" or else the usage of contracting numerous marriages must be discontinued.

Consequently, she whose husband is deceased should support, in proportion to her ability, the same persons, and do the same acts, in the same manner in which her husband, when living, supported those persons, and did those acts. But it is not absolutely necessary that she should fulfil the same voluntary offices which her husband did, such as supporting *Bráhmanas* resident in the *same* town and the like. This is deduced from the term "unprotected persons." The inference is also the same when any other succeeds *to the estate of the deceased*.

Others deduce from the expression "honour with food consecrated to the gods and the manes," that pious offerings are alone positively directed; hence occasional presents of food and apparel and the like are suggested,

not a *settled* maintenance: and this is reasonable; *for*, Sages have not, *by anticipation*, composed books in conformity with the present practice.

JÍMÚTAVÁHANA, too, after saying 'the widow should give the uncles of her husband *sufficient funds*, in proportion to the estate, for his obsequies and for other ceremonies,' adds, this is suggested by the term "food consecrated to the manes;" (for so the word is explained in the Dictionary of AMERA.) By "paternal uncles" are meant the *sapindas* of her husband; by "daughter's sons," the offspring of his daughter; by "sister's sons," the children of his sisters; by "maternal uncles," the family of his mother. To these, and to others standing in a similar relation, she should give it; not, while these exist, to the relatives of *her* father; for the text (CCCXCIX 6) would be unmeaning: but, with their assent, she may give as much as she pleases to the kinsmen of her own father and mother. NÁREDA declares it (Book IV, v. XIII).

With food consecrated to the gods and the manes, a widow must show due honour to the sons of her husband's daughters, to his paternal uncles, and the rest. Thus she ought not to bestow presents on the family of her own father, without honouring with gifts the family of her husband. For the sake of this explanatory repetition the text (CCCXCIX 6) is propounded.

But others expound the precept of NÁREDA (Book IV, v. XIII) as signifying, that the *nearest kinsman in the* family of her husband has authority in the disposal of property, that is, in donation. She may give a present to that person on whom the kinsman of her husband bids her confer one; she may bestow that which he bids her give away. The person who receives the present is considered as receiving it from her husband; for she is dependent on her lord *even after his decease*. "With food consecrated, &c.," (CCCXCIX 6); with victuals sacred to the manes, that is, with a *śráddha* after death; and with maintenance, that is, with food and the like during life: conformably to the literal sense of the verb *pri*, cherish and fill. But some lawyers expound the same phrase, 'honour the paternal uncles of her husband and the rest, at, (*cavya*) the rites sacred to progenitors, and at (*púrta*) the rites sacred to the gods.'

UDAYACARA explains "faithful to her lord" (CCCXCIX 4), firm in the rigid duties of a faithful widow. The definition of such a woman is delivered by HÁRÍTA (Book IV, v. CVII): suffering pain when her lord endures it, that is, affected in mind by similar anguish; cheerful when he is so, affected by joy proceeding from his gladness; in his absence, pining under the anguish of separation, and squalid through neglect of ornaments and dress; who dies when he expires, that is, follows him in death: the woman who does so, such a virtuous woman, *we say*, diverting her mind from impure desires, such as lust for other men and the like, must be considered as *truly* faithful to her lord. Consequently, since she cannot herself offer the monthly *śráddhas* and the rest, if she follow her husband in death, the causal form of expression in the phrase "cause to be offered," is pertinent.

She who is owner of the thing to be offered must command the *śráddha* to be given: the Sage acknowledges her to be the proprietor of the whole estate so long as she lives. Other texts must be also expounded in a similar manner. Such is the opinion of this commentator. But that is not admitted by CHANDÉSWARA and the rest; for, blameless widows, endowed with every quality but *this of* the strictest fidelity to their lords, (*which implies their burning with the corpse,*) would have no title *of succession*. That the text of CÁTYÁYANA (CCCCLXXVII 2) would be nearly irrelevant,

is an objection to that interpretation. The remark in the *Retnácara* is therefore just, that rigid conduct *here* signifies the strictest rule prescribed to widows *who choose to survive their husbands*.

If the woman be already invested with the estate, her enjoyment of it is of course legal: and it is therefore superfluous to say "let her enjoy it;" for there can be no *divine* command enjoining that which is already deduced from a secular maxim. Neither can a positive precept, that she must indispensably enjoy it, be conveyed *by this text;* for it would establish a moral consequence, and she would be guilty of a spiritual offence if she should happen not to enjoy it. Consequently, the enumeration of rites is here an explanatory precept; the construction therefore is, she shall do nothing but enjoy the estate of her lord, *that is, the wealth* of no other. It must not be questioned, whether the care *of property*, and the like, be not thus prohibited. A rule conveys an exception of that which is similar, *but not identical;* and an explanatory repetition also is a special rule: but a preceptive one, which is different from an explanatory repetition, is nearly technical, or founded on acceptation. Hence the inference, that a widow shall not make a gift or other alienation of her husband's wealth devolving on her *by the failure of male issue*. Accordingly JÍMÚTAVÁHANA remarks, a widow shall only enjoy the estate; she ought not to give it away, mortgage, or sell it. It appears from the term "ought not," that, if she do so, the act is valid: but the giver shall be amerced for bestowing that which ought not to be aliened, as is directed by the text of NÁREDA (Book II, Chap. IV, v. LXVII).

RAGHUNANDANA acknowledges, that, for the purpose of raising her husband to a region of bliss, a wife may give away property left by him, and devolving on her *by the failure of male issue*. Hence it is understood, that she ought not to do so for any other purpose. VÁCHESPATI BHATTÁCHÁRYA has delivered the same exposition. BHAVADÉVA also concurs nearly in the same opinion. It is said in the *Viváda Chintámeni*, 'as women are declared by positive texts to be incapable of giving away or otherwise aliening immoveable property bestowed on them by their husbands, so are they incapable of aliening the landed estate of their lords.' Wealth given by a husband *here* signifies that which has been conferred by him on his wife to be her absolute property, as explained by NÁREDA (XVI). A woman has independent power to give away or otherwise aliene moveable effects given to her by her husband, but not immoveable property. So the *Viváda Chintámeni*. It appears from this declared incapacity and dependence, that the donation is void, being made by a person incompetent, and not independent. Accordingly a woman is pronounced subject to the control of *the nearest kinsman on* her husband's side, in respect of gift, which is an alienation; *as appears* from the term "authority" in the text of NÁREDA (Book IV, v. XIII). Modern lawyers do not concede to this opinion; for the validity of a gift made by the owner should not be impugned while no special text pronounces it void. As for the declared subjection of women to the control *of the nearest kinsman*, when deprived of husband and son, it does not thence appear that the gift made by her is void; for the implied object *of the text* is only to show sin in not subjecting herself to *the control of kinsmen on* the husband's side; and it coincides with a text of the *Mahábhárata*, signifying, that women ought not to waste the property of their lords (CCCCII). Accordingly wealth is given away by a woman for the sake of raising her husband to a region of bliss. As a text formerly cited (Book II, Chap. IV, v. XIV), shows, that immoveable property ought

not to be given away without the assent of sons, not that the donation is impracticable: so should the same be also established in the present instance; for the same reasoning is equally apposite.

It is argued, that the text of the *Mahábhárata*, and that of CÁTYÁYANA (CCCCII and CCCCLXXVII 2), declaring *present* enjoyment to be the only fruit *derived by a woman from her wealth*, forbid the transfer of *such* property to another; whence it fully appears, that her disposal of it at pleasure, otherwise than by the *simple* use of it, or by donation for the benefit of her lord, as authorized by *another* text (CCCCI), is invalid. It should not be asked, why is it not said the wife shares only food and apparel, but the brothers or other heirs have the ownership? Were it so, they might immediately give or sell it. Nor should it be affirmed that the gift is not void; because wealth devolving on the wife, *by the failure of male issue*,* is not enumerated among things of which the donation is null, in treating of subtraction of Gift. Not being enumerated among those which ought not to be given, it would fall into the class of things which may be aliened. Is it suggested, by texts belonging to that title, that this *property* may not be given, or that the gift is void? On this point there is no ground of preference.

But that argument is wrong; for "may enjoy," a term employed in the form of an explanatory precept, fully shows that a woman should do no other act but simply enjoy the property: whence it follows, that she ought not to give it away, nor otherwise dispose of it. In the case of an explanatory precept, it does not appear that a different act is void. Were it so, it would follow, from the maxim "eat *certain* five-toed animals," that the act of eating five-toed animals, other than the porcupine and the rest of five *such creatures which may be lawfully eaten*, is null. Nor is that admissible; for it does *sometimes* happen, that human flesh, or that of monkeys and the like, is inadvertently swallowed, and both consequences of appeasing hunger and nourishing the eater do actually follow. No reasoning being offered against the validity of the gift, when the paternal estate inherited on failure of nearer heirs is given away by a daughter, in preference to whom a wife would have succeeded, it does not seem congruous that a gift should be null which is made by a wife who succeeds in preference to a daughter, and who is declared by sacred ordinances to be half the body of her lord, and who expends property of her husband during his life. It should not be answered, 'you yourselves must admit the inferiority of the wife compared with the daughter; for you do not prohibit the donation of the paternal estate by a daughter to whom it has descended, but you forbid the alienation of her husband's estate by a wife on whom this has devolved.' Although a daughter be permitted to make a donation, the inferiority of a wife compared with her is not thereby suggested; for a widow should live in *the practice of* austerities with extinguished passions, refraining from *pleasurable* food, bed, and other gratifications, which she may desire, because she ought to devote herself, being as it were the property of her husband, to his sole service. In like manner, she must not dispose of other property of her lord, unless for his benefit; she ought to observe the rigid duty of carefully preserving it. This also is a duty strictly incumbent on her, not to appropriate the wealth of her lord to civil purposes, any more than consecrated property. A gift or other alienation made by the wife is therefore valid, *though blameable*: however, the king, informed by the heirs, should duly punish her, not the accepter of that donation; for no law authorizes his punishment. Such is the rule of decision established by modern opinions.

But the text of NÁREDA (Book II, Ch. IV, v. LXVII) is authority for chastising a widow *who alienes such property.*

If nothing ought to be given by a wife, may she, or may she not, give money to the king by way of fine when she has committed a sin deserving pecuniary punishment? She must necessarily pay the fine by way of atonement: the prohibition relates to *gifts and payments*, other than *such as are positively* ordained. In like manner, if unable to undergo abstinence or other penance, she must give a milch cow or the like; and gifts or other alienations must be made for the sake of *attaining* the region of bliss.

CCCC.

VYÁSA:—After the death of her husband, rigidly practising the austerities of a student in theology, the widow should, after bathing, daily present water to *the manes of* her husband from the hollow of both hands *joined*:

2. Day after day let her perform with humility the worship of deities; and, constantly fasting *at appointed times*, adore VISHNU:

3. Let her give presents to the chief of priests, that *her* purity may be augmented; and observed the forms of austerity prescribed by law.

4. A woman, ever assiduous in her duty, *thus* redeems both her husband abiding in another world, and herself, O beauteous female!

She should present water from the hollow of both hands, in the form of an oblation. The worship of VISHNU must be performed on the twelfth lunar day; she must fast on the eleventh. By the word "constantly," it is suggested that this should never be omitted *on the appointed days.*

CCCCI.

Smrĭti, cited in the *Dáyabhága tatwa* and *Madana párijáta*:—Whatever is most desirable in this world, whatever most delighted her husband, that must be given to some virtuous man by a widow anxious to gratify her lord.

No other gift or alienation ought to be made: so in the

CCCCII.

Mahábhárata;—*Simple* enjoyment is declared to be the fruit which women gather from the heritage of their lords; on no account should they waste the estate of their husbands.

On this JÍMÚTAVÁHANA remarks, enjoyment might also consist in the wear of delicate apparel and the like; but such use only is approved which is requisite for the welfare of her body, because she confers a benefit on her lord by the preservation of her person. In like manner, gift or other alienation for his obsequies is approved. Accordingly the legislator says, women should not waste the estate of their husbands; and the dissipation of it consists in expenses not necessary for the owner of the estate. Hence,

if she cannot otherwise subsist, hypothecation is permitted; if she cannot even thus maintain herself, sale is also permitted; for reason shows no distinction.

"Afterwards, the legal heirs shall take it" (CCCCLXXVII 2); the meaning is, 'after her they shall obtain it.' Heirs are those persons whom the law permits to take the effects in right of affinity or relation. In answer to the question, whose effects? the wife being readily offered as the nearest term *in the sentence*, does it not follow that a sister's son and the rest, who are legal heirs of the wife's exclusive property, shall take the estate? No; for, were it so, their succession being established of course, this precept would be superfluous. It should not be answered, that the text (DXIII) relates to wealth technically called the peculiar property of women: hence an estate inherited on failure of nearer heirs is not included in *that law;* and this precept is therefore pertinent, as it declares the succession to inherited effects. That text (DXIII) is not naturally restricted to the property of women technically so called; *this maxim is therefore propounded to limit that law.* Consequently, he who would have immediately succeeded, were she then proved not to be living, shall alone succeed when she dies after a title has been *intermediately* vested in her. This rule, which has the sanction of RAGHUNANDANA, JÍMÚTAVÁHANA, and the rest, should be respected.

But the authors of the *Retnácara* and *Viváda Chintámeni* contend, that a wife cannot give away the immoveable property of her husband, which has devolved on her by the failure of male issue: but she may give away moveable effects; they expound the text of CÁTYÁYANA (CCCCLXXVII 2) as relating to the personal estate of her husband, which has devolved on her.

That is liable to objection: for, the text is expounded by JÍMÚTAVÁHANA as relating to the peculiar property of a woman given her by her husband: and their exposition is improper, because the text contains the words "after the death of her husband;" else, since his estate cannot devolve on his wife unless he be dead, it would be superfluous to say, "after the death of her husband."

VÁCHESPATI BHATTÁCHÁRYA explains this law as relating to ornamental apparel or the like given by her husband, and worn by the wife unforbidden by him: that also is the exclusive property of the woman, under the text of MENU and VISHNU (CCCCLXXVIII). Ornamental apparel, though not given by her lord, but worn with his assent, is in so much only the exclusive property of a wife:' so the *Médhátit'hi.* Herein the *Vivada Chintámeni* also concurs; and hence she may dispose at pleasure of such ornamental apparel after the death of her lord. But what must she do while he is living? This question is answered by the last hemistich of the text of CÁTYÁYANA, "as long as he lives let her preserve it" (CCCCLXXII 2): consequently, her ornamental apparel must not be given away while he is living; since it was not spontaneously bestowed by her husband, it must be established, that she has not independent power over it, as over other sorts of property possessed exclusively by women. This commentator so explains the text: he reads the letter *é* joined to *csh* in the last measure of the verse (*cshépayét tat culé' nyathá*), and thus expounds that reading: if she dispose of it, she must bestow it on his family and no other. Hence also it follows, that moveables received on the death of her husband must not be aliened at pleasure.

Among authors attributing various meanings to the text of a legislator, is it not improper to reject the opinion of an ancient lest that of a modern one to be contradicted? it should not be argued, that it is proper to set aside the opinion maintained by authors of other provinces, (for these commentators belong to the *Mait'hila* school), in favour of one maintained by an author of our own country. They are sometimes cited as authority by our own countrymen. The established rule of another province is deemed fit by virtuous men of the present day.

The text is thus expounded in the *Viváda Retnácara* and other works: *in respect of a wife*, the estate of her husband is of two sorts; wealth devolving on her by the death of her husband, and that which is held by her as property during his life, in right of her alliance with him, under the text which declares property common to the married pair. Wealth devolving on her *by his death* is again of two sorts, moveable and immoveable: the personal estate of her husband, which has descended to her, she may dispose of at pleasure under the text above quoted (CCCCLXXVII 1); but wealth received during his life at her marriage, on account of her alliance with her husband, she must preserve *so long as he lives*. Supposing his death, where must it then be placed by the wife? In reply to that question, the legislator propounds the law concerning the immoveable estate of a deceased husband: she must go (*cshapayét*) to his family, meaning to that of her lord; otherwise, that is, on failure of his family, she may enjoy it living with her spiritual parents, namely, her own father and the rest. It should not be argued, that this text properly relates to the gifts of affectionate kindred, as supposed by HÉLÁYUDHA and the *Párijáta*, because it is delivered under that head. Were it so, the question, what must be done with the estate of her lord devolving on her? would not be satisfied; the other exposition is therefore proper, in consequence of that question: and authors acknowledge, that an *interpretation, which resolves a doubtful and* unsatisfied question, should be preferred to *one which accords with the context, and with* the subject treated *in the place where the text may have been propounded, but which leaves the question unanswered*.

The inference is denied; for, expounding with VÁCHESPATI BHATTÁCHÁRYA, the first verse (CCCCLXXVII 2) as relating to the gift of affectionate kindred, and the second verse (CCCCLXXVII 2) as relating to the estate of her lord which has devolved on her, digression is thus avoided, and the question is satisfied.

But other lawyers thus explain the texts of CÁTYÁYANA (CCCCLXXV 3, and CCCCLXXVII 1 and 2): having received "such a gift from affectionate kindred," that is, wealth presented through natural affection by her own father and kinsmen, or by her father-in-law and the rest, she has absolute exclusive dominion over it; hence she may at pleasure give, sell, or otherwise aliene it. But, in respect of wealth given by her husband, there is a distinction: during his life she must preserve it; after his death she may act as she pleases; but if she be incapable of guarding it herself, she must commit it to his family. By this declared exception, she has not absolute dominion during the life of her husband over wealth given by him, though she have such power over other gifts from affectionate kindred. Or, *otherwise expounding the texts*, a gift from affectionate kindred is threefold: one presented *to a woman* by her own father and the rest; ornamental apparel or the like worn with the assent of her husband, though not given by him; and, *lastly*, immoveables bestowed on her by her husband. Concerning the first sort, namely, property moveable or immoveable given her by

her own parent, by her father-in-law and so forth, and concerning moveables bestowed on her by her husband, the legislator propounds the first verse (CCCCLXXV 3). Concerning the second sort, namely, ornamental apparel and the like worn by her with the mere consent of her husband, he propounds the second verse (CCCCLXXVII 1). After the death of her lord, she is permitted to dispose of this at pleasure; what must be done while he lives? To this question the legislator replies, "let her preserve it." If she cannot herself guard it, what must she do? To this question he *also* replies, she must commit it to his family, that is, to the offspring of her husband, and so forth, not to her husband himself; for, since it was not given by him, it cannot be supposed that he may take it: the meaning therefore is this; a woman shall not aliene such effects, even though she wish to give them away, because she cannot herself preserve them. The alienation of immoveables given her by her husband is forbidden by NÁREDA (CCCCLXXVI); what then must be done by a woman in regard to such immoveables? On this *question* the legislator propounds the third verse (CCCCLXXVII): a supposed occasion of enjoyment arises from the term childless; but a widow who has a son cannot properly use the estate, because she is supported by him. Since NÁREDA ordains the resumption of the exclusive property of disloyal women (CCCCV), this legislator adds, "preserving inviolate the bed of her lord;" and since that is most arduous, he further says, "strictly obedient to her spiritual parents," that is, to the father of her husband and so forth, or, on failure of such *guardians*, to her own father and the rest. The *widow* may enjoy that estate with frugality; she must not be prodigally expensive: such is the meaning. She may consequently use it to support life, but not to wear delicate apparel or the like. "Until she die;" from this explanation of enjoyment it follows, that donation is prohibited. On whom shall that estate devolve after the death of the widow? The legislator replies, "the legal heirs shall take it;" that is, the heirs of the peculiar property of the woman: this is a repetition intended to satisfy a doubtful question. Or the legal prohibition of giving away immoveables received from a husband, although they become the property of the woman, prevents their descent to any other than the heir of her husband; after the death of the widow, his heirs shall therefore take the estate: and this interpretation has not been noticed by CHANDÉSWARA and the rest, nor by JÍMÚTAVÁHANA and his followers. But it is inserted in this place, because it is irregular to consider as a repetition what may be explained as an original precept; and a question does arise whether immoveables received from a husband, which CÁTYÁYANA, when treating of the exclusive property of a woman received from affectionate kindred, forbids her to aliene, shall or shall not descend after her death to other heirs than those of her husband.

If immoveables, though voluntarily given by her husband, cannot be aliened by the wife, she cannot of course give away immoveable property devolving on her, and of which she becomes the true owner: admitting, therefore, that the landed estate of her husband, which has devolved on the wife by failure of issue male, ought not to be given away, on whom shall such her estate (not aliened, but long preserved by her,) devolving when she dies, after *carefully* preserving the inherited immoveables of her lord? The answer is, since the law shows the claim of a woman's heirs to be restricted to that which is technically called her exclusive property, they are legally incapable of this succession: the claim of her husband's heir, suggested by the tenor of the subject, is therefore established; and he whose title would have been proved, if she had not been living, has the right *of succession* after

her death. This method is followed by JÍMÚTAVÁHANA in the case of a daughter. It should be here remarked, that although some acknowledge the husband's right to that which his wife has gained by *painting, and other arts or the like*, still, since she is principally considered in the instance of such wealth, it should be taken by her heirs; it is the same on the opinion of those who do not acknowledge any claim of the husband on such property. How can the heirs of a woman, who are declared to be successors to that only which is technically called her exclusive property, have a right to take this inheritance? As the heirs of her lord succeed to what chiefly belongs to him, so her own heirs claim what appertains chiefly to the wife: in the silence of the law this is a reasonable maxim. Thus do these authors explain the rule, grounding their interpretation of it on the opinions of HELÁYUDHA and the *Párijáta*.

This exposition follows all authorities in forbidding the alienation of immoveables devolving on a woman by the death of her husband, and in affirming the succession of his heir to such immoveables: it follows the *Viváda Retnácara* and *Viváda Chintámeni*, in permitting a woman to give or sell at pleasure the moveable effects of her husband devolving on her *by failure of issue male;* it follows the obvious sense of the text in admitting his heirs to succeed, after the death of the wife, to immoveables given by her husband; and on this point the interpretation of VÁCHESPATI BHATTÁCHÁRYA surpasses that delivered in the *Viváda Retnácara* and *Viváda Chintámeni.* According to the *Retnácara* and the rest, the moveable effects of her husband, which had devolved on the wife, go after her death to her own heirs; for the text above cited (CCCCLXXVII 2) relates only to immoveable property. This must be acknowledged *by those authors.*

Texts of legislators, which contradict the universal succession of the wife to the estate of him who leaves no male issue, are *now* cited, that they may be expounded.

CCCCIII.

SANC'HA, LIC'HITA, and PAIT'HÍNASI:—The effects of him who dies leaving no male issue go to his brother; on failure of him, let both the parents take it, or the eldest wife; *after these,* a kinsman bearing the same family name, a pupil, and, *lastly,* a fellow student in theology.

First, the property goes to a brother; next, to both parents. Here an alternative is mentioned in respect of the wife; 'or she shall inherit, *that is,* on failure of both parents.' So

CCCCIV.

DÉVALA:—Next uterine brothers shall divide among themselves the heritage of one who leaves no male issue; or daughters, who have an equal claim to it; or the father, if he survive his son:

2. *On failure of them,* brothers equal in class, a mother, and a wife, succeed in order.

Here brothers equal in class, but born of different mothers, are meant. Another order of succession is thus propounded; for the daughter is mentioned after the whole brother; and a half brother on failure of the father.

CCCCV.

NÁREDA :—Among brethren, if any one die naturally or civilly, and leave no issue, the rest may divide his property among themselves, excepting the wealth of his wives:

2. And shall support them until they die, provided they preserve unsullied the bed of their husband; but from other widows the heirs may resume their exclusive property.*

The legislator thus demonstartes the succession of the wife, in some instances, when the king does not take the estate (CCCCXLVIII 2). So VASISHT'HA also intimates, that the estate of him who leaves no male issue goes to his brother, although his wife survive, if it be impossible that she should bear children (CXVII). Here the expression "until they bear sons" (CXVII), relates to widows left pregnant: thus MISRA. But others hold, that this rule, which supposes a share to be set apart, even if it be possible that she should bear a son procreated by a kinsman, belongs to other ages: a reason is thereby assigned why the widow shall not now inherit if brothers be living.

The succession of the brother, though a wife survive, and of the wife, though a brother survive, has been propounded by various legislators: hence a contradiction *arises*. It should not be argued, that they who ordain the succession of the brother in preference to the wife, direct a maintenance for the widow; hence texts which suggest her right must intend by implication the allotment of a maintenance, for thus the precepts mutually coincide. It is expressly declared, that a wife has a right to the whole property left by her husband (CCCCVIII).

CCCCVI.

MENU :—If brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal; and the first-born shall have no right of deduction.

2. Should the eldest or youngest of several brothers be deprived of his share *by a civil death on his entrance into the fourth order*, or should any one of them die, his *vested interest in a* share shall not wholly be lost;

3. But, *if he leave neither son, nor wife, nor daughter, nor father, nor mother*, his uterine brothers and sisters, and such brothers as were re-united after separation, shall assemble and divide his share equally.

BÁLARÚPA observes, 'under these texts of MENU, if brethren, after a first partition, live again together as parceners on a *mutual* agreement in this form, "that property which is thine is also mine," and *subsequently* make a second partition, no additional portion shall be given to the first-born. Should any one of them be deprived of his share by his entrance into the fourth order or the like, or by natural death, it shall not be lost; but his

* The Verse inserted at CCCCXLVIII 2 was also cited in this place immediately after v. CCCCV 2. T.

single share shall be computed and received in due proportions by his uterine brothers, even though not re-united, and by his half-brothers who were re-united with him; and a fourth part must be given for their nuptials to *such of* his uterine sisters who had not already received a quarter of a share for that purpose: and this allotment of a fourth part to a sister must be understood in the case where the former distribution was made according to the number of mothers, each of whom had born a son and a daughter. Such being the sense, brethren re-united after separation having thus recovered the right of inheritance (CCCCXXVI), claim the estate of him who leaves no male issue, in preference to the widow; but she would succeed to the estate of one who left no male issue, and who was not re-united *with his brethren.*'

That is not acknowledged by JÍMÚTAVÁHANA; for the text of VRĬHASPATI, expressed nearly in the same terms with that of MENU, shows that a brother, even though re-united, has no claim if the wife survive; and JÍMÚTAVÁHANA states many other objections, which are here omitted to avoid prolixity; for his purpose is attained by a single *valid* objection.

CCCCVII.

VRĬHASPATI:—If brothers who have made a partition become, through mutual affection, re-united, and *again* make a division of their joint property, the first-born has no right to a larger portion.

2. Should any one of them die, or anyhow seclude himself from the world, his share shall not be lost, but devolve on his uterine brother;

3. But she who is his sister is next entitled *to* take the share: this law concerns him who leaves no issue, nor wife, nor father, nor *mother.*

CULLÚCABHATTA also remarks on this text of MENU concerning a reunited brother, 'this must be considered as the rule, if he leave neither son, nor wife, nor father, nor mother.' But VÁCHESPATI MISRA affirms, that all texts which suggest the succession of brothers in preference to the wife relate to the estate of an undivided brother, and the texts cited which suggest her succession in preference to them relate to the estate of a husband who has made a partition with his brothers; for, if he die before the distribution, it cannot be affirmed, "this was the property of her husband," since all the brethren are joint owners of that wealth: the widow therefore can have no title. It should not be argued, that she may claim partition with the brothers of her husband, and take his share. A distribution among among brethren being permitted after the death of both their parents, an express law shows, that a brother, his son, grandson, and the rest shall receive shares (LXXIX); but no law declares that the wife *of a deceased brother* shall *in that case* take an allotment. Nor should it be argued, that texts which propound the right of the widow establish her participation, since they cannot be otherwise pertinent. These texts may also relate to the inheritance of divided property, and may therefore be otherwise applied. Accordingly VASISHT'HA has declared, that the widow of a childless brother may hold a share until she bear a son (CXVII). In fact, that allotment belongs to the *posthumous* son alone; but, if none be born, that share shall be received by, and distributed among, the brothers. Such is the meaning: for the words "until they bear sons," would be otherwise unmeaning.

This again does not appear satisfactory; for the participation of the widow is deduced from the word "share" in the text of *Vriddha* MENU. That term is not used in speaking of succession to an estate which has been already divided, for *it* carries a reference to some entire property; and when this *share* is now inherited, there is no total *of which it is part.*

CCCCVIII.

Vriddha MENU:—A widow who has no male issue, who keeps the bed of her lord inviolate, and who strictly performs the duties of widowhood, shall alone offer the cake at his obsequies, and succeed to his whole share.

It should not be argued, that this reading (*critsnam ansam labhêt*) rests on the authority of JÍMÚTAVÁHANA and others: but MISRA and the rest read, succeed to his whole estate (*critsnam art'ham labhêt*); and hence, according to this *last* reading, it does not appear that a widow shall participate *with co-heirs.* It is evident from the text of VRĬHASPATI (CCCCXCIX 3), that she shall participate. JÍMÚTAVÁHANA explains the term which occurs in that text, (*sanábhi,*) as signifying uterine *brothers.* It is derived in the apposition called *bahubríhi*, and intends those who were born in the same womb (*nábhi*). In this text the word "with" must be understood; and the third case, governed by that particle, signifies 'at the same time,' as in the example, "the lioness sleeps fearless with her single cub; the female ass bears her burden with her ten colts:"* the sense of the text is, "although uterine brothers be living, the wife of him who died leaving no male issue shall succeed to his share;" that is, shall inherit the allotment of her deceased lord. Accordingly, the following mode of reconciling *the apparent contradiction* must be also rejected: 'the text above cited (CCCXCVIII) should be expounded as signifying that brothers by different mothers shall divide the estate among themselves; and consequently uterine brothers have a claim before the widow, but half-brothers after her:' *it must be rejected,* because the text of VRĬHASPATI shows the right of the widow *to inherit,* although an uterine brother exist: and this is reasonable; for, since the devesture of her husband's property, together with his leaving no male issue, is a general cause which vests property in the widow when divided wealth is considered; there is no obstacle to prevent its vesting in her, even though the wealth be undivided, or be held by re-united parceners. The limitation of divided property is there improper, because it would be troublesome *to prove,* and no law ordains it. But these texts are nevertheless pertinent. This is also held by JÍMÚTAVÁHANA and the rest.

CHANDÉSWARA, finding in the text of *Vridd'ha* MENU (CCCCVIII) the words "who strictly performs the duties of widowhood," and deeming it irregular to treat that as a superfluous term which may be explained as an *indispensable* condition, affirms, that a wife who does so is alone preferred to a daughter, to a brother, and the rest; and she who does not strictly perform the duties of widowhood, *though* not guilty of adultery, shall be merely maintained by her husband's brother and kinsmen, under the text of HÁRÍTA: but an adultress shall be banished from the house, conformably with the precept of NÁREDA (CCCCV 2).

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* The quotation was partial. I cite the verse at large from the ethical treatise of CHÁNACYA MISRA. T.

CCCCIX.

HÁRÍTA:—A woman, widowed and young, is untractable; but separate property must always be given to women, that they may pass their destined life.

Succession to heritage, in right of good qualities only, does actually occur in the case of adopted sons. Since a woman has not *yet* performed the duties of widowhood and the like, how can she have a title to the inheritance immediately after *the* death *of her husband?* She has an immediate title, because she is disposed to perform those duties; but afterwards, if her propensities happen to change, she forfeits the right which she had fully possessed. "Young" is mentioned in the text of HÁRÍTA, as indicating the possibility of adultery. By youth, *that* age is not strictly meant; for any woman, though young, who is known to be well disposed, has the right of inheritance by universal consent. By the term "untractable" is suggested the neglect of the duties of widowhood. They consist in refraining from the leaf of betel, from unction, from eating of vessels of zinc (Book IV, v. CXXXIV), and from sleeping on a bed (CXXXV), and so forth, and in strict abstinence on the eleventh lunar day, and in other acts of mortification.

CCCCX.

PAIT'HÍNASI:—The effects of him who leaves no male issue go to his brother: on failure of brothers, his father and mother shall take *the heritage*, or his wife not distinguished by good qualities, his distant kinsman bearing the same family name, his pupil, or a fellow-student in theology.

The wife not eldest, that is, *not senior by her virtue, or, in other words*, not distinguished by good qualities, is heiress on failure of the father and mother; such is the sense of the text: and that concerns wealth acquired by the man himself without using the property of his sire. The claim of a brother is prior to that of a father or mother, because he is first entitled to perform obsequies *for the deceased*. Brothers of the whole and half-blood succeed in order according to the benefits conferred by them; but, although they are conferred in unequal degrees among whole brothers by an elder and by a younger one, still, since there is no difference in the degree of benefit arising from the funeral cake offered by them in the double set of oblations, they do not succeed in order, but inherit jointly. The reason is this: an heir being sought for the estate of one who has left no male issue, his brothers and his parents being proposed, both claims seem equal; (for these confer benefits by sharing the funeral cake offered in the double set of oblations, and by giving birth to him; and his brothers do so by presenting the single and double sets of oblations, which he was bound to offer, and by performing his obsequies): admitting, therefore, the greater weight of rites relative to another world, his brothers shall inherit, like sons and the rest, before his father; but his half-brothers succeed after those of the whole blood, because they are not qualified to offer the *párvana* for his mother. Among uterine brothers, although an elder one be not competent to perform the obsequies of the deceased, if a younger brother exist, they have a joint title, because age and qualities are not considered in *the* claims to *this* inheritance: else the same rule would exist in the succession of sons; for the eldest performs the obsequies of his father. This should also be under-

stood in the case of half-brothers. The order in which a father and mother claim succession shall be explained hereafter; and that order must be observed in this instance. But if the property were acquired with supplies received from the father and the rest, the claim of parents precedes even that of a brother, as ordained by YÁJNYAWALCYA; because the benefit of aiding the acquisition of wealth is greater *than any other;* and because they are related *in the first degree* without an interval.

On failure of these, "the wife not distinguished by good qualities *shall inherit*" (CCCX). By this epithet, and under the text of YÁJNYAWALCYA (CCCXCVIII), she who performs all the prescribed duties of widowhood claims the succession before a brother.

The expression "leaving no male issue," signifies 'leaving none male or female,' the last term being understood. It consequently signifies 'leaving no son, nor virtuous wife, nor daughter.' In like manner, since the daughter's son precedes a brother in offering the funeral cake in the double set of oblations; since he performs the obsequies of the deceased, in preference to the collateral kindred; and since the text of VRĬHASPATI propounds his title, the brother can only claim the succession after the daughter's son.

CCCCXI.

VRĬHASPATI:—As she (the daughter) becomes owner of her father's estate, although kinsmen be living; so likewise her son is acknowledged to be the heir of the estate left by his mother and maternal grandfather.

Consequently, the virtuous wife has the first claim to the wealth acquired by her husband, who has left no male issue; next, the daughter; after her, the son of a daughter; in default of him, the uterine brother; on failure of such, one by a different mother: after these, the son of a whole brother; next, the son of a half-brother; on failure of them, the mother; if she be dead, the father; if both be deceased, the wife possessing few good qualities: but a mere maintenance shall be given by the heir to a widow wholly destitute of virtue: on failure of a wife possessing few good qualities, the succession devolves on distant kindred and the rest. The order in which daughters succeed may be seen under the proper head; and the authority on which a brother's son takes the heritage will also be found in its place.

This order of succession being established in the case of wealth acquired by a man himself, the very same sequence should be followed in the case of wealth acquired with supplies received from the father and the rest. *However*, the reversed order of father and brother, founded on the distinction of *various* sorts of property, should not in that case be adopted; but the order of succession propounded by YÁJNYAWALCYA and the rest must in such an instance be followed, if the wealth were acquired with supplies received from the father and the rest: since a wife possessing few good qualities is not then considered as conferring any benefits, the order should not in that case be broken *to interpose her between the father and brother.* In whatever text it is ordained that a mere competency for subsistence shall be given to the wife, it must be understood of one devoid of good qualities. A wife possessing little virtue must likewise be supported by brothers and the rest; for the proprietor was bound to maintain her. As for the text of SANC'HA, it must be considered as apposite, when a father or brother

takes the estate of his son or brother. In the precept of Dévala (CCCCIV), order signifies the sequence which is of general notoriety; and that is found in the texts of Vishnu and the rest. Chandéswara thus expounds the law.

CCCCXII.

Sanc'ha:—To the childless wives of brothers and of sons, strictly observing the conduct prescribed, their spiritual parent must allot mere food and old garments which are not tattered.

But some add, by way of supplement to the opinion of Chandéswara, that food and apparel must be given, under the text of Sanc'ha, to the childless widow of a son or brother by her father-in-law, her brother-in-law, and the rest, who take the estate of her deceased lord: and such nearly is the practice as observed by certain persons. Thus he who takes the estate of another must give food to his widow and the rest, whether she be daughter-in-law or sister-in-law *of the heir*. If he cannot supply her maintenance, he must not take the estate of the deceased, so long as such a widow survive. But the allotment of food and apparel to both these widows is not always indispensable; for they are not enumerated in the text of Menu (Chap. VI, Sec. II, Art. I,) *among persons who must be maintained at all events*. However, they should, if possible, be supported; for, since Vrihaspati, treating of the Succession of Widows (CCCXCIX), directs that she who is first, by the text of Menu, in the order of succession to the estate of him who leaves no male issue, shall honour learned and unprotected persons and the rest, the same ought likewise to be established in the case of another heir.

This opinion of Chandéswara is strictly conformable with the *letter of the* law, but it contradicts the opinion of Jímútaváhana. On this head, the last-mentioned author affirms, that the wife has a prior right before brothers and the rest to the property of him who leaves no male issue; for the texts of Yájnyawalcya and Vishnu (CCCXCVIII and CCCCXVIII) intend that order of succession. But the word "women," in the text above cited (CCCCV 3), relates to females other than the *legal* wife of the deceased: and these are never entitled to the whole estate of one who leaves no son; for it is forbidden to distribute wealth "among women, ignorant men, or such as neglect their duties;" and no special law ordains their succession, as *it does* the inheritance of a wife and the rest. But a woman *legally* espoused, a daughter, and the rest, do inherit, by a special law, the estate of him who leaves no male issue; for they are not barred by the general precept.

CCCCXIII.

Wealth was conferred for the sake of defraying sacrifices; therefore distribute it among honest persons, not among women, ignorant men, or such as neglect their duties.*

Accordingly the king, who succeeds, on failure of all heirs, to the estate of any man except a *Bráhmana*, must maintain the wife of the late proprietor, as ordained by Nárada (CCCCV 3); for, in speaking of a legal wife, the eldest is meant. The seniority of wives is not regulated by age or good

* Cited at length in other chapters; but only partially quoted in this place. I insert it here, for a reason which will appear at the end of the first Section of Chapter IX. T.

qualities, but by class (Book IV, v. XLVI). In ages other than the *Cali*, marriages were contracted in various tribes, and sometimes with women of the four classes; in such a case, that wife, among three or four, who was equal in class with her husband, had precedence. Such is the order of seniority *by* class. If a *Bráhmana* have not espoused a *Bráhmaní* woman, may not a *Cshatriyá*, or, on failure of her, a *Vaiśyá*, be his eldest wife? Therefore does the legislator add, "to all such married men, the wives of "the same class only (not wives of a different class by any means) must "perform the duty of personal attendance, and the daily business relating "to acts of religion" (Book IV, v. XLVII).

CCCCXIV.

MENU :—For he who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere *Chandála* begotten on a *Bráhmaní*.

But it is consequently admitted, that, on failure of wives equal in class, those duties may be performed by one of another tribe: *however*, those acts which may be done by his wife, who sprung from a different class, must only be performed by one belonging to the tribe next below him. VISHNU declares it (Book IV, v. XLIX). Hence a *Bráhmaní* wife *performs those duties* for a *Bráhmana;* on failure of her, the *Cshatriyá*, in the case of the utmost distress; but not his *Vaiśyá* or *Súdrá* wives, though actually espoused: such is the opinion of JÍMÚTAVÁHANA. Admitting that *Vaiśyá* and *Súdrá* women may not assist him in the performance of religious duties, still what can oppose their seniority on failure of other wives superior in class? This is objected by certain authors: still, however, no difficulty ensues; for, if a *Bráhmana* have only espoused women of the commercial and servile tribes, the *Vaiśyá*, but not the *Súdrá*, may in that case inherit as his wife: but, if women of the four classes have been espoused, the *Cshatriyá* and the rest are entitled to maintenance only, because they are not *legal wives** *in a strict sense.* It should not be objected, that still the obligation on the king to maintain the inferior wives of the proprietor is not apposite, because the *legal* wife alone does in that case inherit the estate. If she be dead, or if the inheritance be refused by her, it may be necessary that *the other wives or concubines* should be maintained by the daughter, brother-in-law, or other heir, or, *lastly*, by the king. This may suffice on the subject of marriages contracted in the four classes; for they are now prohibited. It has been, however, noticed by JÍMÚTAVÁHANA to obviate the seeming contradiction between texts of legislators.

Consequently the wife legally espoused is sole heiress of the estate of her lord, whether separated or undivided, whether reunited or remaining disunited, although a daughter and the rest be living. But "wife" (*bhárya*), in the text of DÉVALA, signifies legal wife (*patní*); for it relates to the special case *of the distinguished one.* "Order," mentioned in that text (CCCCIV), alludes to the sequence propounded by YÁJNYAWALCYA and the rest. In the text of PAIT'HÍNASI (CCCCX), the construction must be taken from remote terms; the eldest wife, or the father or mother, shall take the estate of him who leaves no male issue; on failure of them, it goes to

* Throughout this gloss on v. CCCCV, *patní* is employed as signifying the first or legal wife; and *bhárya*, as signifying any other wife inferior in rank. T.

the brother. This precept of law is thus propounded by him. In no text ordaining the allotment of a competent maintenance does the term legal wife (*patní*) occur RAGHUNANDANA and the rest, following the opinion of HELÁYUDHA and the author of the *Calpateru*, thus reconcile the seeming contradiction. This alone is accurate.

In following the opinion of CHANDÉSWARA, the practice of good men is infringed by admitting the prior claim of a brother; and that opinion contradicts the text of MENU (CCCCXXXIV). According to the interpretation of JÍMÚTAVÁHANA, if a man die leaving two wives equal in class, the eldest alone has a right to his estate: for, on the concurrent texts of DACSHA and VISHNU (Book IV, v. XLIX and LI), and by the law above cited, the term *legal* "wife" (*patní*) signifies her who was married from a sense of duty.

MADANAPÁLA holds generally, that among wives of all tribes a distribution shall be made as among sons of four classes. He adds, after the death of the woman, on failure of her own daughters and their male issue, the daughter of another wife of her husband shall succeed. Hence it appears to be his opinion, that, after the death of a woman, her heirs shall inherit the property. According to the interpretation of RAGHUNANDANA, JÍMÚTAVÁHANA, MISRA, and CHANDÉSWARA, the heirs of her husband claim the inheritance, a text cited under one title being explained as carrying an allusion to another; but, according to MADANAPÁLA, the same text being explained as confined to the title under which it is placed, the heirs of the wife take the heritage. This concise exposition may suffice.

On the point above noticed, the opinion of JÍMÚTAVÁHANA cannot be set aside by that of CHANDÉSWARA, because they are equal in merit and defect: but some trifle must be given to disloyal wives. In like manner, it appears, from the condition "strictly performing the duties of widowhood," that a mere competency for subsistence shall be allotted to women, who, though not guilty of adultery, do not strictly perform the duties of widowhood. Since a son devoid of good qualities is declared incapable of inheriting (CCCXIX 3 and 4), surely the same ought to be established if a wife be destitute of virtue: but if she perform some of the duties of widowhood, she has a title to the estate, because she does not wholly fail in observing such duties.

But others argue, because the text above cited (CCCCIX) in effect expresses, that a widow devoid of good qualities shall have food and apparel only; and since it is declared by the text of *Vriddha* MENU (CCCCVIII), that she only has a title who strictly performs the duties of widowhood; and since VRĬHASPATI, immediately after ordaining the succession of the wife, propounds the several duties to be performed by her, such as obsequies and the like (CCCXCIX); and since a wife confers no benefits on her lord, if she be not virtuous; it follows, that a virtuous widow inherits the estate, but one devoid of good qualities has no claim: the rule is not deduced from the difference of wives equal and unequal in class; for, inferiority of tribe is not expressed in any one text concerning the allotment of a competency for subsistence; and it is reasonable that a wife unequal in class should, in this case also, receive a share, in the same form with partition between the son of a wife equal in class and the son of one belonging to an inferior tribe: however, unequal distribution according to *the* class *of the women*, and partition *of any sort* between wives of the same husband, have not been noticed by any legislator. What then is the purport of the text of PAIT'HÍNASI (CCCCX); since it would contradict the practice of good men, if the interpretation of

CHANDÉSWARA be followed; since it is seemingly inconsistent with the text of MENU; and since there would be no certainty, if remote terms be joined in construction, for the same is also possible in the texts of YÁJNYAWALCYA and the rest? If a woman, whose husband is deceased, raise up two sons to him by appointment of her spiritual parent, and, abandoning them, co-habit with the natural father of those children; in that event, should any of those sons of the wife die leaving no male issue, the text of PAIT'HÍNASI is applicable to the case: and, in that instance, "parents" must be understood to signify the father and mother of his natural mother. A wife not eldest is in every case debarred by a brother and the rest: or else this precept, "the effects *of the deceased* go to his brother," relates to property acquired with supplies from that kinsman's estate.

According to the opinion of JÍMÚTAVÁHANA, since the wife has an interest in the wealth of her husband during his life (CCCCXV), and since there is nothing to annul her property after his decease, how can her husband's brother and the rest, *in any instance*, have a claim to the estate? To this it is answered, No; for it is established that her property is actually lost by the lapse of her husband's right. Accordingly the property of the wife is devested even when the effects are given away by her lord. Those who affirm that the allotment of a share *to the mother*, when partition is made among sons,* is founded on her ownership of the father's estate, because she was his wife, accordingly contend, that a share of the distributed wealth must be allotted to a wife of the father, whether she have or have not a son, and whether partition be made before or after the death of the father. Accordingly BHAVADÉVA remarks, on the succession of a widow, that a wife had a claim on the estate of her lord even during his life, by the texts of DATTA (CCCCXV); and, after his death, she shall have an equal share with her son, by the same authority (CCCCXV 2). Does it not consequently appear, that, according to the opinion of these lawyers, the wife of the proprietor shall receive a share from his brother and the rest, as she would from his son?

CCCCXV.

DATTA:—Wealth is common to the married pair.†

2. After the death of her lord, the mother shall have an equal share with her sons.

To the question thus proposed the answer is, the exigence of such secondary property is supplied by allotting a competency for subsistence; but an equal share is given by sons, because she is, in respect of them, most venerable.

But the property of her husband, devolving on the wife *by the failure of nearer claimants*, descends, after her death, to the legal heirs of her husband, on the concurrent opinion of many authors.

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* There has been singular inaccuracy in the quotation of texts concerning the shares of mothers; an important law, here quoted, is unnoticed by the compiler in its proper place.

"The mother of sons, making a partition after the death of their father, shall also take a share." T.

† I can no-where find the text cited at full length: this much of it has been frequently quoted; but the author of it is here named for the first time, and he does not rank among legislators. T.

CCCCXVI.

VRĬHASPATI :—Those near or distant kinsmen, who, becoming her opponents, injure the property of a woman, let the king chastise with the punishment of a robber.

The widow must defray the education and nuptials of an unmarried daughter. Such is the succession of a wife to the estate of him who leaves no male issue.

II. On failure of her, the estate descends to the daughter, by the text of YÁJNYAWALCYA (CCCXCVIII) and rule of VISHNU.

CCCCXVII.

VISHNU :—The wealth of him who leaves no male issue goes to his wife ; on failure of her, to his daughter ; if she be dead, to the son of a daughter ; if there be no such *grandson*, to the father ; in his default, to the mother ; on failure of her, to the brother ; if he be dead, to the brother's sons : in default of these, to the remoter kinsman ; on failure of kindred, to one descended from the original stock ; if there be none such, to the fellow-student ; on failure of him, to the king, except the property of a *Bráhmana*.*

MENU and VRĬHASPATI propound the daughter's claim (CCX and CCXXIV 1) ; the last-named legislator declares what qualifications are required of a daughter that she may inherit the estate of her father (CCXXIV 2). The order of succession, says BÁLARÚPA, is, in this case, the same which is ordained by the text of PARÁŚARA.

CCCCXVIII.

PARÁŚARA :—The unmarried daughter shall take the inheritance of the deceased, who left no male issue ; and, on failure of her, the married daughter.

It should not be argued, that all this relates to the daughter who has been appointed to raise up issue for her father ; and that the term "not appointed," in the text of VRĬHASPATI (CCXXIV 2), relates to her who is selected by an implied intention, without a formal declaration. It is ordained by MENU, that, if a son exist, such a daughter shall have an equal share with him. MISRA.

Consequently a daughter, though not appointed to raise up issue to her father, shall inherit, as appears from the terms, "him who left no male issue." Are not those terms employed to show that she takes the whole estate of him who leaves no son born in lawful wedlock ; for the texts relating to the succession of a daughter, and of her son, are delivered by MENU among precepts relative to an appointed daughter ? Since he has propounded no separate law concerning the claim of a daughter, these texts must be taken as intending by implication the succession of daughters in general. It should not be objected, that their right of inheritance is not ordained by codes of law. The text of YÁJNYAWALCYA, expressing "this rule concerning

* Partially quoted in this place. There are many various readings of this text. I here combine the readings most approved. T.

the heritage of him who has gone to heaven leaving no male issue extends to all classes" (CCCXCVIII 2), declares the succession of a daughter to the estate of him who leaves no son begotten or adopted, neither one born in lawful wedlock, nor an appointed daughter or the like; and the text of VISHNU conveys the same implied sense. According to the opinion of those who contend that the son of the appointed daughter becomes the adoptive son of her father, there is no difference whatsoever between an appointed daughter and any other female offspring. Neither can the terms "leaving no male issue," signify 'leaving no son properly so called.' Were it so, the wife and the rest would inherit in order, although a son of the wife begotten by a kinsman, or other adoptive son, exist. Nor is that intended by law-givers and commentators. This concise exposition may suffice.

On failure of unmarried daughters, a married one claims the heritage by the text of PARÁŚARA above cited (CCCCXVIII). Such is the notion of JÍMÚTAVÁHANA, and many other authors. CHANDÉSWARA and the rest do not contradict that opinion; it should therefore be adopted. A distinction is admitted in respect of married daughters: she who may possibly have a son, and she who actually has male issue, shall alone take the inheritance, not she who is barren or widowed; for the text of NÁREDA shows, that daughters confer benefits through the means of their offspring; and precepts of MENU, on the subject of Inheritance, declare the conferring of benefits to be the sole ground on which rests a title to take the heritage (CCCLXX and CCCCXXXIV).

CCCCXIX.

NÁREDA:—If there be no son, the daughter *is heiress* by parity of reason; for she keeps up the progeny, *since* a son and a daughter both continue the race of their father.

Here progeny intends such descendants as give the funeral cake; for, he who does not offer it, conferring no benefit, is in nothing different from one who is not a descendant, or who is the offspring of another man. But a daughter's son is a giver of oblations; not his son, nor her daughter; for the funeral cake stops with him. So JÍMÚTAVÁHANA, with whom DÍCSHITA concurs. Consequently, neither a daughter whose son is dead, but who has a son's son, nor she who has female issue, inherit, though they were not barren.

CCCCXX.

DÉVALA:—To unmarried daughters a nuptial portion must be given out of the estate of the father; and his own daughter, lawfully begotten, shall take, like a son, the estate of him who leaves no male issue.

Under this text, the virgin daughter, by a woman equal in class, and legally espoused, can alone claim the inheritance; not a daughter by a woman not legally espoused, nor one of a different class, nor one begotten on the wife by a kinsman, nor any other adoptive daughter; for sons begotten on a wife by a kinsman, and other adoptive sons, being noticed by the law, are alone legal issue; but such daughters being unnoticed in codes of law are not so. The same distinction should be also understood in respect of a married daughter, who would be debarred by an unmarried one.

On this some lawyers remark, since the text of NÁREDA, which propounds *succession in right of* benefits conferred, is not cited by RAGHUNANDANA under the head of Succession of female issue, therefore barren and widowed daughters inherit immediately after those who have or may have sons. This seems to be his opinion. It should not be asked, how can they claim the inheritance, since they confer no benefits? Were this a valid objection, it would contradict the assertion of JÍMÚTAVÁHANA and RAGHUNANDANA, when treating of Succession to the several property of a woman, that barren and widowed daughters succeed on failure of others, because they also are issue *of the mother*. It should not be argued, that they inherit as issue *of the mother*, because a text, treating of Succession to the several property of a woman, expresses, "if a married woman leave no "issue, her husband shall take her property." Since the words "daughters" and "married" occur under this head, both may inherit as married women and as daughters. It should not be objected, that the commentator has not expressly said, that barren and widowed daughters may claim the heritage in this instance, as he has said that they succeed to the several property of their mother; he does not therefore admit the succession of barren and widowed daughters. Neither does he, like JÍMÚTAVÁHANA, affirm, that they do not inherit *in certain cases*; he may have left unnoticed the contrary assertion of a former author, although his own opinion *admits their succession*.

It should not be argued, that benefits conferred through the oblation of the funeral cake in the *párvana* constitute the sole ground on which rests the right of succession to the property left by a man, as appears from the text of MENU (CCCCXXXIV) immediately following the precept above cited (CCCLXX); but any benefit whatsoever is sufficient foundation of a title to inherit the several property of a woman. There is no authority for such an inference; and pupils and the rest, though not conferring such benefits, do succeed to the property left by a man. Nor should it be answered, they who afford not such advantages only inherit the estate left by a man, on failure of persons conferring benefits through the oblation of a funeral cake in the *double set*, or *párvana:* were it so, the succession of a daughter would be contrary to law. Nor should it be argued in reply, that she confers such benefits through the means of her son: were it so, a sister, a father's sister, and the rest, would also claim the heritage. Nor should it be answered, that women, not expressly pronounced *capable of inheritance*, are excluded by a text above cited (CCCCXIII): such a maxim is not infringed by affirming the title of barren daughters and the rest to inherit the peculiar property of a woman, on failure of persons who offer the funeral cake in the double set of oblations; and that maxim is not admitted in the case of property exclusively held by a woman. As a daughter's son, *in this instance*, succeeds before a great-grand-son in the male line, so does a daughter inherit in preference to a son's son.

If this inference be proposed, the answer is, that is admissible; the barren and widowed daughters may succeed on failure of heirs, including *distant* kindred, if a precept be found to this purport, "the pupil shall take the inheritance of him who leaves no "daughter," like the text above quoted, "the husband shall take the property if the woman leave no issue;" but if *other* female offspring have a *prior* title, and the barren and widowed daughters have no subsequent claim, while a giver of the funeral cake in the double set of oblations exists, they do not succeed on failure of heirs, including distant kindred, since no text shows their title directly or indirectly. Such is the accurate opinion of JÍMÚTAVÁHANA.

Introducing the appointed daughter into this disquisition, JÍMÚTAVÁHANA had variously discussed the subject. Since the appointment of a daughter *to raise up issue for her father* is now forbidden, the argument is not here inserted for fear of unnecessarily enlarging the book, but it may be thus abridged: if the appointed daughter die having borne no son, her wealth shall be taken by her sister and the rest; but if she die after bearing a son, who deceased, it shall be inherited by her husband and the rest.

After the death of a daughter, by whom shall property which goes to her be taken? To this JÍMÚTAVÁHANA replies, if she was invested with the right while unmarried, and die after a subsequent marriage, it descends, on the failure of her who was invested with the right, to those married daughters and so forth on whom it would have devolved upon the *original* failure of an unmarried daughter never invested with the right: it does not descend to her husband and the rest, for that *succession* relates to the peculiar property of women. The meaning is, since it is shown by a text of law (CCCCLXXVII 2), that, on failure of a wife invested with the right *of succession*, those heirs of the former owner, who are declared entitled to the inheritance on *the original* failure of a wife never invested with the title, namely, a daughter and the rest, shall succeed to that property; the right of a daughter, and of a daughter's son, who are inferior to a wife, is therefore proved by the rule, *that the greater includes the less*, exemplified by the staff and bread: or wife is an indefinite term intending women in general; the same inference follows.

If they be inferior to a wife, as here affirmed, does it not follow that the heirs of the original owner shall take the property after the death of the daughter's son, or even after the demise of the pupil and the rest? Neither is this consistent with common sense, nor acknowledged by numerous other authors, nor conformable with logical reasoning; for no authentic text ordains it, and the son of a daughter's son ought not to be prevented from taking the estate of his father, *the inheritance of* which falls within the seven lawful means of acquiring wealth. Therefore does the commentator add, "or wife is an indefinite term," &c. Consequently, the making apposite what was not pertinent in respect of wealth devolving on a wife and the rest, is continued in the last part *of the gloss;* apprehending a defect in the former, the commentator reconciles it in the latter exposition.

To this *some* lawyers object the want of proof, that her own female issue, and the son of her sister, and other heirs of a daughter, can only claim the peculiar property of the woman; for the texts of MENU and VRĬHASPATI (CCCCLXXXV and DXIII) ordain *generally* the succession of daughters and the rest to any property of their mother and so forth; and although restricted by the precept of CÁTYÁYANA (CCCCLXXVII 2), which numerous authors consider as relating to wealth which has devolved on the wife by failure of nearer heirs, still there is nothing to restrict those texts in other cases. Again; if a daughter, a sister's son, and others, can only take the peculiar property of a woman, then, should wealth have been acquired by her mother, or by his mother's sister and the rest, in the practice of arts, commerce, or the like, there would be no certainty who may claim it after the death of the acquirers. But this commentator admits the sole right of a woman to that which she herself earns by arts or the like; for he explains the text of MENU, (Book III, Chap. I, v. LII 1), as merely implying her subjection to control; and expounds "the dominion of her husband," in the text of CÁTYÁYANA (CCCCLXX), as signifying his independent power by

which he may seize it, even though not suffering extreme distress: although the dominion of a husband be there propounded, the uncertainty in regard to wealth which a widow has gained by arts or the like, is not obviated: the dominion of her husband's family and the rest over her *acquisitions* does not follow; for no law ordains it. If it be said, wealth which a woman acquires during coverture by arts or similar means is not her peculiar property, by the terms of the text (CCCCLXX), but any other effects are so; and the expression, "the separate property of a woman is declared to be six-fold" (CCCCLXII, &c.), is intended to except a less, not a greater number, as is acknowledged by commentators; the answer is, there still is an inconsistency on the opinion of JÍMÚTAVÁHANA: for the wealth which a woman acquires during coverture by arts or the like, cannot well be comprehended *in her separate property;* and, if it were comprehended in it, her husband would not have independent power over it. Does not the peculiar property of a woman signify generally that wealth possessed by her over which her husband ought not to exercise independent power, and that which should be inherited by daughters and the rest, excepting what is acquired by arts or similar means; for different senses of a term are in many instances admitted according to the difference of the subject? Then, what is the definition of the term "peculiar property of a woman?" If *it be explained*, wealth *received* on her account, excepting that which has devolved on her by failure of nearer heirs; what is the use of that exception, or whence is it deduced? Again; the observation, "wife is an indefinite term," is impertinent; for the word wife is not contained in the text (CCCCLXXVII 2), and there is no proof that it should be understood; it is only inferred from the correlative term husband. It should not be argued, that it does not follow, from the insertion of the correlative term, that the wife of the late proprietor is intended; for it is not so shown in the maxim, 'preserving the bed of her lord inviolate, she may enjoy the estate of her son,' nor in other instances: neither can that be inferred from the words "gift *or heritage* (dáya) of her husband," which occur in the preceding text (CCCCLXXVII 2), for those terms, explained as signifying wealth given by her husband, might be repeated in *interpreting the subsequent text, which would therefore relate to such gifts of her husband:* of course the word wife must be understood, *not inferred. This should not be argued:* for if some term must be understood, it may be woman, or some other equivalent word; and the subject, governed by the active term "enjoy," being sought, "gift of her husband" must be repeated *from the preceding text*, or "estate of her husband devolving on her" must be understood. Again; *this text does* not convey a general maxim, that a "woman shall enjoy the heritage;" for sisters and the rest might *in that case* obtain the estate left by a brother: it is merely an explanatory precept limiting *the right* to simple enjoyment: and this is founded on the text of another legislator, expressing, "she shall only enjoy the estate which has "devolved on her by failure of nearer heirs, and not give it away or sell it." There is no proof, that wife here signifies woman in general. If it be said, a sufficient argument may be drawn from this reasoning, 'simple enjoyment being granted to a wife, who is first in the line of eventual succession to property devolving *on collaterals*, the same is also proper in the case of other female heirs;' the last distinction would be superfluous, since it must be *equally* admitted, that a daughter's son, a pupil and the rest, are likewise incapable of giving away or selling the estate: the wife is not first in the eventual succession to an estate, but the son alone is *first heir ;* the law knows not any distinction between eventual and direct succession: this, and

the words wealth devolving *on collaterals*, are used on some occasions by certain authors for the sake of their accepted sense. However, the term direct *or lineal* succession is employed for the purpose of *explaining, that the heir is subject to* the control of his own son and the rest, in the disposal of wealth which has devolved on him as son, grandson, or remoter descendant *of the former proprietor*. Therefore wealth devolving on a son or other *lineal* successor, and on a wife or *collateral* heir, must be called heritage, because it is obtained in right of affinity or relation. Thus, if the maxim be established, that a wife shall *simply* enjoy the estate, a question arising on the expression "after *demise*, the legal heirs shall take it;" after the death of the wife must be assumed, 'not after the *demise of any* woman.' This term here signifies a female human being; and wife denotes a married woman. By discussing the objections and answers on the insertion of these several terms, *and the consequent inferences*, the volume would be needlessly enlarged: both *the questions and the answers* are therefore omitted. But though not directly supported by the text of any legislator, or concurrence of any commentator, the opinion delivered by JÍMÚTAVÁHANA is respected by many lawyers. However, he only says, that wealth which has devolved on a daughter goes after her *death* to the heir of her father; he has not expressly affirmed, that a daughter shall not aliene an estate which has descended to her: but if it be said, the general maixm, that after a woman the legal heirs *of the former male proprietor* take the estate, cannot be deduced without establishing a general rule that a woman shall *merely* enjoy an estate which has devolved on her, it then follows that such is his meaning, but not otherwise.

According to the opinion even of those lawyers who acknowledge the property of the husband in that which his wife acquired by arts, she shall *exclusively* obtain such wealth after the death of her husband, even though a son or other descendant exist; and after her death her own heirs shall take it: otherwise, by parity of reasoning, a father having dominion over his unmarried daughter, ought to have property in wealth which she acquires by arts; yet that has not been mentioned by any legislator.

If the daughters be numerous, a distribution is made. Such is their succession.

III. On failure of female issue, the son of a daughter is heir, according to JÍMÚTAVÁHANA and RAGHUNANDANA. BHAVADÉVA, observing "daughters" expressed in the plural number in the text of YÁJNYAWALCYA (CCCXCVIII), and inferring the implied comprehension of daughters both *fruitful and sterile*, and of the daughter's son, because the plural number would otherwise be unmeaning, also *admits this succession*. The reasoning approved by JÍMÚTAVÁHANA is pertinent on this interpretation; for he pronounces both daughters capable of inheritance. The word taken in a secondary sense here intends both a daughter and her male offspring, as son in the text of YÁJNYAWALCYA (CCCXCVIII 2) signifies *male issue, that is*, a son, a son's son, and the son of such a grandson. The sense is the same in the text of DÉVALA (CCCCIV). But the reading of the rule of VISHNU, immediately after the words 'on failure of her, to the daughter,' "if she be dead, to the son of a daughter" (CCCCXVII), is not acknowledged by JÍMÚTAVÁHANA; for he has not cited that part of the rule under the head of Succession of a daughter's son. That reading is approved by BHAVADÉVA. But the text of VISHNU, cited by GÓVINDA RÁJA, is universally acknowledged to be sufficient proof of the right of a daughter's son.

CCCCXXI.

VISHNU:—On failure of sons, and of their male issue, the sons of daughters shall obtain the property; for the male offspring of a son and of a daughter are equally qualified to perform obsequies for men of all classes.

CHANDÉSWARA also suggests the title of a daughter's son in preference to brothers, by citing the text of VRĬHASPATI, with these words premised, 'immediately after a daughter, and the son of a daughter.'

CCCCXXII.

VRĬHASPATI:—On failure of them, uterine brothers, and sons of brothers, kinsmen bearing the same family name, pupils, and learned priests, are entitled to possess the estate.

From the difference of benefits conferred, and on the reason of the law, his title ought to take effect even before that of parents. The benefit conferred consists in the oblation of a funeral cake to the proprietor by the son of his daughter (CV). In respect of another world, the benefit conferred by parents consists in their sharing the funeral cake which should have been offered by the proprietor; but, in succession to heritage, procreation appears to constitute a superior claim compared with the acceptance of the funeral cake: and the oblation of it *does so, when* compared with procreation; for, it is shown that a son and the rest take the heritage, although a father or other ancestor be living.

"On failure of them," that is, in default of a daughter, and of a daughter's son, mentioned in preceding texts, "brothers" are the heirs. Such is the meaning; and this supposes the failure of parents, as will be hereafter explained. The preceding texts are two, one of VRĬHASPATI quoted in a former chapter (v. CCXXIV 2), and another (CCCCXI) cited by BHÓJADÉVA, with these words premised, "VRĬHASPATI, on the succession of a daughter who is or is not appointed *to raise up issue to her father.*"

It should be here remarked, since GÓTAMA declares the mere intention to be a sufficient cause of considering a daughter as appointed to raise up issue to her father (CCXXVII), "not appointed" might be explained, not nominated by an express declaration that she is taken to propagate her father's race, *but* appointed by an implied intention; yet it is almost fruitless so to expound it, and it contradicts many authors: that interpretation should not therefore be adopted. However, this text of VRĬHASPATI does not solely propound the right of a daughter's son; *whose mother was not selected to raise up issue to her father;* for it may be apposite, as relating to the son of a daughter appointed by an implied intention. Consequently, on failure of the givers of a principal funeral cake, namely, the son, the son's son, and the son of such a grandson, the daughter's son, who gives a secondary funeral cake in the double set of oblations, is heir: that is propounded as confirmed by the reason of the law.

Then the title of a son's grandson, whether in the male or female line, may be supposed to precede that of both parents, by parity of reasoning, and because the text of VRĬHASPATI is nothing to the purpose. No; for this only declares the right of inheritance founded solely on benefits conferred; and the precept of VISHNU, cited by GÓVINDA RÁJA (CCCCXXI), is the

ground on which rests the title of a daughter's son; and it is declared that he confers benefits (CV). It should not be argued, that the text of VISHNU relates to the son of an appointed daughter. The terms "who leaves no son nor son's son" would be inexplicable. It cannot be true, that the son of an appointed daughter, though acknowledged to be a son's son in contemplation of law, claims the estate after the issue of a son begotten in lawful wedlock; for it is established, that his mother has a share *of the estate* at the same time with the son of the body (CCVI).

Thus the grandsons of a son, both in the male and female line, are not comprehended in the texts of YÁJNYAWALCYA and the rest, by taking the terms *of the precepts* in a secondary sense. Accordingly, no ancient author has asserted the title of both to take the heritage.

As for the remark, that the texts of MENU, which are cited by JÍMÚTAVÁHANA to prove that the right of a daughter's son (CCXX γ' & â & CCVII), relate to the son of an appointed daughter, because she is mentioned in the context; the right of a grandson in the female line must nevertheless be somehow deduced from the implied sense of these texts, to obviate disparagement of the legislator, since it has not been separately declared by MENU; like the expression "the sun is set" in speaking of ablutions at twilight, *and of other duties to be performed at the close of the day.*

The learned do not positively hold, that, after the death of a daughter's son, the heirs of his maternal grandfather shall take the wealth which had devolved on him; but his son or other heir shall alone take that property.

Again, if daughter's sons be numerous, a distribution must be made. In that case, if there be two sons of one daughter and three of another, five equal shares must be allotted: they shall not first divide the estate into two parts, and afterwards allot one share to each son; for such a mode of distribution is only ordained in partition among the sons of sons: and the reasoning is not equal, for a son's son, whose own father is dead, receives a share from his uncle; but the daughter's son, whose mother is deceased, does not receive a share from his mother's sister.

As the daughter begotten by a man himself on his wedded wife equal in class, is alone heiress of her father's estate by the text of DÉVALA (CCCCXX), so the son of such a daughter alone succeeds, as grandson, to the estate of his maternal grandfather. This also should be understood. From the expression "who leaves no son," it appears, that, on failure of appointed daughters, the right devolves on one who has not been yet given in marriage; and hence also it must be understood, that the son of any daughter, though *she were* not appointed to raise up issue to her father, is heir.

But some lawyers contend, that a daughter's son can *only* claim the succession on failure of all the heirs enumerated, *from the wife* to the king (CCCXCVIII); or, since there can hardly be a failure of the sovereign, in default of all those heirs preceding him. That is wrong; for, immediately after *mentioning* the daughter's son, follows the text of VRĬHASPATI, "on failure of him, "brothers, &c." (CCCCXXII); and he does confer benefits. MADANAPÁLA also affirms the succession of a grandson in the female line, immediately after a daughter. The right of inheritance does not solely follow the benefits conferred.

MISRA considers the texts of VRĬHASPATI and the rest as relating to the son of an appointed daughter; and he explains the precept of VISHNU also (CCCCXXI) as relating to the son of an appointed daughter, and as

intended to authorise his succession to the whole estate, like the text, "all "these adopted sons are pronounced heirs of a man who has no son by "himself begotten" (CXC 3).

But GÓVINDA RÁJA contends, that the claim of a grandson in the female line precedes even that of a daughter. It is wrong; for this grandson is secondary in comparison with the daughter, since he becomes the offspring *of his grandsire* through her; and her prior right is proved, because VRĬHASPATI compares her son's claim to her own (CCCCXI).

On the death of a daughter's son, who has received the heritage of his maternal grandfather, his own son claims the estate; because it had become the property of his father, and because no express law resists his right. This should be noticed. Such is the succession of a daughter's son.

IV. On failure of them, the mother is heiress by the text of YÁJNYAWALCYA (CCCCXCVIII): thus the *Retnácara* and *Chintámeni*. It should not be argued, because the term "both parents" signifies father and mother, that both shall inherit jointly. The text of VISHNU propounds their successive rights; "on failure of her, (*namely, the widow of him who dies leaving no male issue,*) *the wealth* goes to his daughter; if she be dead, (*and leave no son,*) to the father; in his default, to the mother" (CCCCXVII). Accordingly VRĬHASPATI propounds the succession of the mother, without reference to the father:

CCCCXXIII.

VRĬHASPATI:—The mother must be considered as heiress of her son, who dies leaving neither wife nor male issue; or, with her consent, the brother *may be heir.*

Here "with consent," signifies with the acquiescence of the mother. But the *Párijáta* expresses, the term is illustrative, comprehending the father: the meaning therefore is, 'with consent of both parents.' Of what use is the sanction of the father, for the same effect follows the assent of the mother, who had a right to the succession? That is wrong; for indirect acquiescence is here meant, which may be expressed in these or other words, "I take it not:" there is no occasion to suppose a *formal* declaration of consent, in these words, "do you take it?"

MENU also declares, that the mother inherits (CCCCXXIV). The succession of the father on failure of her is intended by YÁJNYAWALCYA, as appears from his precept, and from the texts of VISHNU (CCCCXVII) and of MENU (CCXXIII). Such is the opinion delivered in the *Retnácara* and *Chintámeni*.

CCCCXXIV.

MENU:—Of a son dying childless, *and leaving no widow*, the mother shall take the estate; and she also being dead, the paternal grandmother shall take the heritage *on failure of brothers and nephews.*

But JÍMÚTAVÁHANA and the rest read the text of VISHNU (CCCCXVII), "on failure of her it goes to his daughter; if there be none, to the father; in his default, to the mother." Consequently, on failure of the daughter's son, the father is heir; in default of him also, the mother: as for the texts of MENU and VRĬHASPATI (CCCCXXIV and CCCCXXIII), they must be understood *as apposite* on the failure of the father. The argument on which

this rests is subjoined: a daughter's son is preferable to a father, because he offers a funeral cake to the deceased, and two which the deceased was bound to offer; but the father *would have* shared a funeral cake offered by the late proprietor, *if the latter had survived*, and presents two which he was bound to offer: the father is therefore inferior to the daughter's son in respect of one funeral cake, because the acceptance *of it* is subordinate to the oblation; and the mother is yet inferior to him, because she merely shares a single cake *which would have been* offered by the deceased. A text of MENU (CCLIV) is also proof of the inferiority of the mother compared with the father. Her superiority above the brother and the rest will be considered in its place.

The different rules of decision being founded on different readings of the text of VISHNU, there is no certainty on this point; for neither reading can be rejected, since both are cited by *respected* authors. It should not be answered, the argument delivered by us, and other reasons stated in the treatise of JÍMÚTAVÁHANA, prove the superiority of the father. More argument might be brought to prove the pre-eminence of the mother: for example, her importance declared in an authoritative text;

A mother surpasses a thousand fathers, for she bears and nourishes the child in her womb; therefore is a mother most venerable.

If the veneration due to her exceed the respect due to a father a thousand fold, how can the text cited from the *Purána* by MÁDHÁVÁCHÁRYA be relevant?

By law, the father and the mother are two reverend parents of a man in this world; however adorable *the goddess of* the earth, a mother is *still* more venerable:

2. But of those two the father is pre-eminent, because the seed is chiefly considered; on failure of him, the mother *is most revered;* after her, the eldest *brother*.

He himself thus reconciles the seeming contradiction; this relates to a father who gives *instruction to his son in* the *whole Véda*, after performing the ceremonies on conception and all other holy rites which perfect the twice-born man: otherwise the mother is most venerable. Accordingly the text of MENU is also pertinent.

MENU:—A mere *áchárya*, or *a teacher of the* gáyatri *only*, surpasses ten *upádhyáyas;* a father, a hundred such *áchâryas;* and a mother, a thousand natural fathers.

He who, for his livelihood, gives instruction in a part only of the *Véda*, or in grammar and other *Védángas* and the like, is an *upádhyáya*, or sub-lecturer; he who girds the pupil with the sacrificial cord, and instructs him in the whole *Véda*, with the law of sacrifice, and the mysteries or sacred *upanishads*, is an *áchárya*. So MÁDHÁVÁCHÁRYA, following the text of MENU*.

VYÁSA:—Ten months a mother bore her infant in her womb, suffering extreme anguish; fainting with travail and various pangs, she brought forth her child;

* Chapter II, v. 140 and 141.

2. Loving her sons more than her life, the tender mother is *justly* revered: who could recite all her merits, even though he spoke a hundred years?

By citing other texts from the *Puránas*, the volume would be unnecessarily swelled; for this reason they are omitted. The seeming difficulty is thus reconciled: title to respect is no cause of inheritance; were it so, who could take the estate while both parents exist? But benefits conferred by his own act, and near relation by the funeral cake, *are the grounds on which rests the claim of an heir*: now, the father is superior by the benefits which he confers; therefore he has the right of succession, even though the mother be living: and the reading approved by Jímútaváhana must be followed in the text of Vishnu (CCCCXVII); for Yájnyawalcya declares, "If two texts differ, reason, *or that which it best supports*, must in practice prevail, when the reason of law can be *shown*."

But other lawyers argue, if the estate of a son devolve on his mother while the father lives, still the latter has the sole right to it; for it is not her exclusive property, being different from gifts received before the nuptial fire, or at the bridal procession or the like; and while her husband lives, nothing is acknowledged to be her exclusive property, except that which was given to her.

The father is heir on failure of a daughter's son; and the mother, in default of the father: the opinion of Jímútaváhana and the rest is respected by many lawyers, as that which should be now followed in practice.

After the death of a mother, who has inherited the estate of her son, the heirs of her peculiar property shall not take the succession, but the heirs of the son. So Jímútaváhana. It shall not be aliened by the mother in her life-time: this also is affirmed by the learned to be the opinion of Jímútaváhana. Misra also asserts, that she has no power to give away, or otherwise aliene, property which devolved on her *by failure of nearer heirs*. This lawyers affirm *to be a settled rule*.

V. On failure of the mother, brothers *take the estate*, by the texts of Yájnyawalcya, Vishnu, Vrihaspati, Menu, Gótama, (who uses the word eldest as an illustrative term intending all brothers,) Dévala, and Cátyáyana (CCCXCVIII, CCCCXVII, CCCCXXII, CCXXIII, CCCCIV, and CCCCXXV).

Gótama:—The wealth of deceased brothers goes to the eldest *and the rest*.

CCCCXXV.

Cátyáyana:—On failure of male issue, the father shall take the estate acquired by his son after partition, or the brother, or the natural mother, or the paternal grandmother, in regular order.

Here the order of succession, to which the texts of Dévala and Cátyáyana allude, follows *the precepts of* Yájnyawalcya and the rest. Such is the opinion of Jímútaváhana and others; Chandéswara also must be understood as assenting to that opinion: but Misra, in expounding the text of Cátyáyana, alleges a two-fold established case; the father shall inherit what had been acquired by him, and the brother and the rest shall succeed to that which had been gained by a collateral relation. On his

interpretation, it must be inquired, what shall become of property inherited from ancestors and so forth? CHANDÉSWARA infers, from a text above cited (CCCCX), that, on failure of a wife distinguished by good qualities, of a daughter, and of a daughter's son, the brother is first heir of property which he who leaves no male issue had himself acquired: in default of brothers, both parents; or, if those be dead, the wife not distinguished by good qualities and so forth. But JÍMÚTAVÁHANA and the rest affirm, that, on failure of the wife, daughter, and daughter's son, the father, mother, and brothers, in order, take every sort of property.

In the text of YÁJNYAWALCYA, the term being exhibited in the plural number, it is thereby suggested, that brothers variously distinguished have a right of inheritance. Although their relation might be considered as single, in as much as it is the affinity of a brother, it is nevertheless distinguished into many sorts, to intimate their successive titles. That order of succession is subjoined: in the first place, a re-united brother by the same mother shall take the estate of one who leaves no male issue; on failure of such, the uterine brother not re-united, and the re-united one by a different mother, have equal claims; in default of them, the half-brother, who is not re-united. So RAGHUNANDANA and JÍMÚTAVÁHANA. The proofs are subjoined.

JÍMÚTAVÁHANA *expressly* says, in collateral succession, the uterine brother has the first claim; as declared by the text, "an uterine brother shall transmit and receive the heritage to and from his uterine brother, *as he happens to live or die*."

CCCCXXVI.

YÁJNYAWALCYA:—Two brothers, who, after their forisfamiliation, have both re-united themselves to the family of their father, shall reciprocally transmit and receive their estates, as they happen to live or die; and so shall two uterine brothers.*

Consequently, YÁJNYAWALCYA, having propounded in general terms the succession of brothers, whether by different mothers or by the same, whether re-united or not (CCCXCVIII), subjoins this text, for the sake of exhibiting a distinction, by virtue of which, if a single brother have both claims, as related by the whole blood and as re-united, he bars all the rest. The share of one re-united brother who deceases, another re-united one shall receive and so forth; but a whole brother, not one by the same father only, shall alone receive the share of a re-united brother by the same mother. A similar opinion is delivered in the *Dípacalicá*.

CCCCXXVII.

CÁTYÁYANA:—On failure of nearer claimants, re-united brothers must be considered as heirs of those who are re-united, and disunited brothers of those who are disunited; *for* they reciprocally share *the estates* if they have no progeny.

Brothers who are not re-united, take not the shares of those who die after re-union; but disunited brothers must be considered as heirs of those

* This version of the text is transcribed from a manuscript of Sir WILLIAM JONES. It is variously explained in the subsequent commentary. T.

who die disunited: "on failure of nearer claimants," that is, in default of a wife and the rest. The last terms of the text are joined in the apposition called *dwandwa*. So CHANDÉSWARA. These terms are added to show the reason *of the precept;* the meaning therefore is, 'because they are competent to take each other's shares when they have no issue:' this also some lawyers affirm. By expressing, in general terms, that re-united brothers are heirs of their co-parceners, it is intimated, that a re-united brother of the whole blood succeeds, to the exclusion of one who remains separate. VÁCHESPATI MISRA also observes, that uterine brothers, who are not re-united, do not take the heritage. Consequently, if there be whole brothers, one of whom is, and the other is not, a co-parcener, the re-united brother by the same mother has the sole right of succession, by consent of many authors.

But if two re-united brothers, one by the same, the other by a different mother, claim the succession, what is the rule in that case? To this CHANDÉSWARA replies, the meaning of the text (CCCCXXVI) is this: on the competition of brothers of the whole and half-blood, the whole brother shall alone take the estate. Accordingly,

CCCCXXVIII.

Vrĭhat MENU:—If a brother by the same mother be living, one by a different mother shall not take the estate; the law is the same, even though it be immoveable property; but, on failure of the whole brother, one of the half-blood may indeed possess the estate.

This is reasonable; for, it is said by JÍMÚTAVÁHANA, if one have two claims, as brother by the same mother and as re-united, he bars all other claimants; therefore the re-united brother of the whole blood is sole heir to the estate of the deceased: but, on failure of him, the disunited brother by the same, and re-united one by a different mother, have equal claims; because one is brother of the whole blood, though disunited; the other re-united, though brother of the half-blood: and CHANDÉSWARA remarks, 'thus it is shown that relation by the whole blood is a ground on which even a disunited brother may take the inheritance;' since there are arguments on which both may claim the succession, it is therefore declared that both shall inherit: and MISRA observes, 'a brother by a different mother, having re-united himself to the family, shall take the estate of his half-brother; but not unless he re-unite himself:' an uterine one, however, may take the inheritance, even though he do not re-unite himself to the family (interpreting the text by connecting remote terms) The following precept is explicit:

CCCCXXIX.

YÁJNYAWALCYA:—A brother by a different mother, if he return after partition to the family, not any other half-brother, shall inherit the estate; but a whole brother, even without returning, shall succeed *to it*, not a *disunited* half-brother by the same father only, *except on failure of the rest.*

The term employed in this text signifies brother by a different mother; having returned to the family, he may take the estate *of a co-parcener,* but not that of a half-brother, who is not re-united: it is thus shown, that he can only inherit the estate when he had returned to the family. "A

whole brother;"* one who springs from the same father and mother; in short, a uterine brother. "Not re-united," is repeated in the last part of the text. Consequently a whole brother, though not re-united, shall take the estate; hence it follows, that he shall succeed to his whole brother, who had not returned to the family. Since an order of succession is not mentioned, these two shall succeed together; and a partition shall therefore take place between them. On failure of uterine brothers, the legislator adds, "not a half-brother by the same father only;" that is, one who is not re-united shall not take the estate. Hence, if there be half-brothers, one of whom is and the other is not re-united, the disunited half-brother is not heir. The equal claim of a re-united half-brother with a re-united whole brother had been already denied, the equal claim of a disunited half-brother with a re-united half-brother is now denied; there is consequently no vain repetition. Such is the interpretation approved by CHANDÉSWARA. MISRA says, the last terms of the text are a mere repetition.

On the reading of the second measure *nányóderyó d'hanam harét*, the construction is, 'a half-brother, who is not re-united, shall not inherit the estate.' JÍMÚTAVÁHANA thus expounds the text: 'a half-brother, being re-united, shall take the estate, not a disunited one; whole brother is repeated from the preceding text (CCCCXXVI); 'but a whole brother, even though not re-united, shall succeed, not solely the re-united half-brother.'

But others thus comment on both texts of YÁJNYAWALCYA (CCCCXXVI and CCCCXXIX): if there be whole brothers, some of whom are and others are not re-united, the legislator says, "a re-united brother shall take the heritage of a re-united one;" if the whole brothers remain separate, he says, "an uterine brother shall take the heritage of an uterine one." In that case, if there be a re-united half-brother, what shall be the consequence? The legislator replies, "a brother by a different mother, if he return after partition to the family, shall take the estate." Since both have claims to the succession, they shall inherit equally; but a half-brother, who had not re-united himself, shall not succeed: this the law-giver declares, "not any other half-brother." If a uterine and a half-brother have returned to the family, what shall be done in that case? To remove the doubt whether both shall inherit under the vague expression of the text, "a re-united brother shall inherit the estate of a re-united one" (CCCCXXVI,) the legislator says, "the re-united half-brother by the same father only shall not take the inheritance" (CCCCXXIX).

Some lawyers affirm, that re-union of parceners is not a ground of succession; for, were it so, it might be supposed that a son who is owner of separate wealth, and a brother's son, would not jointly inherit the property possessed by a paternal uncle re-united with his nephew. On the contrary, inheritance positively rests on other claims. Thus, succession in right of fraternity being established, *the* re-union *of one* bars any other brother. In like manner, if there be a whole brother not re-united, since he alone has a claim in right of affinity by the whole blood, he alone shall inherit; not a half-brother, even though re-united. Thus the text above cited (CCCCXXVI) relates to uterine brothers only; and the legislator denies the claim of a half-brother in the subsequent text (CCCCXXIX); "a brother

* *Sansrishta;* its more obvious sense, in which the term is often used, is "re-united:" the text might be translated, without deviating from that sense, in some one of the modes subsequently proposed. T.

by a different mother, whether re-united or not, shall not inherit the estate of his half-brother" (*reading the text* nányóderyadhanam harét): but on failure of uterine brothers, the legislator adds, "a re-united *half*-brother, not *any other* half-brother by the same father only, shall inherit the estate."

That is wrong, since it contradicts all *respected* authors, and is inconsistent with the reason of the law; for, why should not re-union be a cause of a brother's succession, as well as relation by the whole blood? If it be said, since a son, a wife, and the rest, confer benefits on the proprietor in another world, there is no parity between that claim and one founded on re-union; but a uterine brother confers benefits, by offering the double set of oblations for the mother; *the answer is*, a re-united brother also defrays religious ceremonies by means of *his* property *thrown* into parcenary. On failure of either a disunited whole brother, or of a re-united half-brother, the other is heir: in the one case, if there be half-brothers, one of whom is and the other is not re-united, the re-united brother has the sole right *to the inheritance*, not the disunited one; for the text of YÁJNYAWALCYA expresses, "a re-united brother shall receive the estate of a re-united one" (CCCCXXVI). On failure of both these *prior claimants*, a disunited brother by a different mother shall inherit, because he also is brother by the same father. Since a mother also claims the funeral cake and other oblations, which are given by an uterine brother in the *śráddha* performed with a double set of oblations (CCCCXCVI), the whole brother is superior to one by a different mother, because he offers the double set of oblations for the mother of the late proprietor: since two brothers, living in the same house, afford reciprocal support, preserve each other's property, confer mutual benefits by the acquisition of wealth, and respectively earn religious merit at the expense of wealth acquired by each other, they are nearer the one to the other than a disunited brother.

Who is called a re-united parcener? He is thus defined by VRÌHASPATI:

CCCCXXX.

VRÌHASPATI:—He is said to be "re-united," who, having made a partition, lives again, through affection, with joint property in the same house with his father, his brother, or his paternal uncle.

After brothers have made a partition by mutual consent, when any one of them lives *again* with a certain other brother, these two are *said to be* re-united. Their dwelling together is not simply a residence in the same house or abode, (for that may happen even without affection, when the habitations are not equally numerous with the brothers;) but it consists in forming one household: and their intentions are thus declared, "what is thy property is mine;" their effects are thus intermixed: "the duties of us both shall be the same;" an agreement for community of duties is thus made: in like manner, *one is made for* common fare: and this is deduced from the insertion of the terms "through affection;" else this word would be superfluous, since they could not dwell one moment together without affection; but now such particular regard is suggested by that term.

"In the same house;" in the same household. Consequently two brothers, again living together, through mutual affection, as joint housekeepers, after having made a partition, are called re-united parceners. Such is the meaning; and the text is so interpreted by RAGHUNANDANA, JÍMÚTAVÁHANA, VÁCHESPATI MISRA, and the rest.

When the owners of several property live together as joint house-keepers, making a common stock of their fortunes, they are said to be re-united; for this is *an* easy *interpretation:* not making a common stock of their fortunes after partition; for this would be *a* burdensome *condition*. Some become owners of several property by partition; others are naturally so. Thus union, founded on affection, may take place between two persons sprung from different families, natives even of different countries. This some lawyers affirm. It is wrong; for such united persons are nowhere seen; and the terms of the text, "having made a partition," would be unmeaning; and it is improper to consider any term as nearly superfluous, which may become pertinent: accordingly a burdensome condition cannot be imputed as a fault. Re-union consists in dwelling together as joint house-keepers, after making a joint stock subsequent to partition. It should not be argued, that partners in trade, living together after a distribution of wealth gained by commerce, would be called re-united. Partition signifies distribution of heritage. Such being the case, may not the sons of two sisters be re-united; for they may happen to live together in the same household, after a partition of the property left by the maternal grandfather and the rest? Heritage here signifies wealth inherited in the direct male line: such is the meaning, as appears from the terms of the text, "with his father, his brother, or his paternal uncle." They alone are determinately meant, who were not separate by their birth. Of these, the father is first mentioned, as the distributer of the estate, when it is divided in his life-time: the term, taken comprehensively, includes also the paternal grandfather and great-grandfather; the brother is next mentioned, as the distributer of shares among brothers; and lastly, the paternal uncle is named, as the person who distributes an estate shared with a son's son, whose own father is dead: the term, taken comprehensively, includes the son and grandson of a paternal uncle, and the great uncle and others; the wife of a brother and the rest are not meant, because they are subject to the control of their husbands and so forth. Among those only does re-union take place; not among others: but the practice of returning to co-parcenary after partition with the son of a paternal uncle does exist, as remarked by CHANDÉSWARA. It should be here noticed, that if two brothers die after dividing the estate, the re-union of their sons or grandsons is not consistent with the obvious sense *of the law;* because he who made a partition does not *in this case* return to a common dwelling. Such is the opinion of MISRA and CHANDÉSWARA.

JÍMÚTAVÁHANA likewise holds, that they only who may be co-parceners by birth (in respect of property acquired by a father, brother, paternal uncle and the rest), having made a partition, are re-united by dwelling together in the same house as joint house-keepers, after annulling the former partition, through mutual affection, by a declaration in this form, "thy wealth is mine, and that which is mine is thine." There is no re-union of any other persons, such as partners in trade, by the simple junction of property.

Here the son or other *male* descendants of a paternal uncle are comprehended in the term "and the rest," as appears to have been understood by SRÍ CRÍSHNA TERCÁLANCÁRA; for he has remarked, on the words "by birth," that the mother is thereby excluded, because her claim to property arises from marriage: else the commentator would have said, 'the mother is excluded, because she is not *found* among the persons enumerated, namely, the father, brother, and uncle.'

But RAGHUNANDANA affirms, that re-union only takes place between father and son, between brothers, or between paternal uncle and nephew. In effect he considers the term "and the rest," in the remark of JÍMÚTAVÁHANA, as comprehending only the son and nephew. JÍMÚTAVÁHANA again observes, when treating of the shares of re-united parceners, "re-union should not be admitted among others besides those who are expressly mentioned, else the enumeration would be unmeaning." The author of the *Pracáśa*, after citing the text, adds, this is a positive precept. *However*, the opinion of CHANDÉSWARA and the rest is consistent with the reason of the law; for there is no difference whatsoever, whether the paternal uncle or his son be the distributer. But the opinion of RAGHUNANDANA, and of the author of the *Pracáśa*, follows the letter of the text. This should be examined, and one opinion only should be established.

Among four brothers, if two be separated, and two remain undivided, but the effects be distributed by arithmetical computation or the like; for example, ten *suvernas* out of twenty have been allotted to two brothers, and five a-piece to the other two, or if land or the like have been similarly distributed, in that case, should one of the two undivided brothers die, leaving no son or other near heir, by whom shall the effects, assignable for his share, be taken? Not by the uterine brother, in so much re-united; for he is not so *in the strict sense of the term*, since re-union consists in living together after partition, with an agreement in this form, "what is thy property is mine; and what is my property is thine:" but in this case partition had not taken place between those two co-heirs. Nor shall all the surviving brothers by the same mother take *the lapsed share;* for that would contradict common sense: it is difficult to find a reason why a re-united parcener shall alone inherit when brothers live together after partition, and all the brothers succeed when some of them live together without ever making a partition: in administrative justice the letter of the law must not be solely followed. If it be said, partition by common consent of all the brothers is authorized by *express* ordinances; but the law has not indicated partition among some of the co-heirs, and co-parcenary of others, and no special rule of decision has been delivered on this point; no such partition ought therefore to be made: *the answer is*, if certain *Súdras*, or the like, not having seen the codes of law, make such a partition, a rule of decision becomes necessary. Nor is that distribution void; for it has been made by the free consent of all the co-heirs, and no special law forbids it.

To this lawyers reply, the expression "having made partition," does not intend a division reciprocally granted, but any distribution, whether accepted or made by both the parceners, between whom re-union takes place. Consequently, two brothers have in this case a single allotment, the others have *separate* shares: partition therefore takes effect even in regard to those two; and they afterwards live together as joint house-keepers. It should not be objected, that the word "again" becomes irrelevant, because they do not twice live together. Since the literal sense of that term is burdensome, and there is no occasion to distinguish the shares, when re-union takes place, the word must be taken in a secondary sense. But other laywers affirm, that an undivided heir, as well as a re-united one, excludes a divided heir: in the silence of the law, this must be established by reasoning.

In fact, a distribution is in such a case made among all the co-heirs, by an act of the mind; accordingly the portion of an eldest son, the best house and the like, are allotted: in its consequences there is no difference. This brief exposition may suffice.

Under the text above cited (CCCCXXVI), shall not one re-united brother take the vested share of another, even though he leave a son, a wife, or other near heir? No; for VRĬHASPATI denies it (CCCCVII). "Or seclude himself from the world" (CCCCVII 2): the particle has a connective sense, alluding to degradation and the like. "It devolves on his uterine brother:" consequently, if brothers by the same and by different mothers had re-united themselves with the deceased, the uterine brother has the sole right of succession; but a re-united one by a different mother, and an uterine brother *not re-united*, have an equal claim: both these inferences are here justified. "To her who is his sister a share must be given" (CCCCVII 3) to defray her nuptials, as already explained. "Such is the law concerning him who leaves no issue" (CCCCVII 3), neither a son, a son's son, nor the son of such a grandson, nor a daughter, nor the son of a daughter: "nor leaves a wife, nor father, nor mother;" that is, no wife endowed with good qualities, as above mentioned; the word mother is understood, having been regularly dropped by the rules of etymology. It follows, that a difference arises from the re-union of parceners in collateral succession only; but the claim of re-united brothers is not stronger than that of a wife and the rest.

The texts of MENU (CCCCVI), bearing the same import with those of VRĬHASPATI above cited, must relate to a re-united brother, who leaves no son, nor wife, nor other near heir. CULLÚCABHATTA concurs in this opinion. "His uterine brothers" (CCCCVI 3): by repeating *the word* re-united, this relates to the uterine brothers who have returned to co-parcenary; and the term is also taken in a general sense: consequently, if brothers by the same and by different mothers had re-united themselves with the deceased, the uterine brother is sole heir; but if he have not returned to co-parcenary, he has an equal title with the re-united brother by a different mother. This sense is deduced *from the text.*

"Such brothers as were re-united," that is, half-brothers; for uterine kindred had been already mentioned: by the word "re-united," such brothers, not having returned to the family, are excluded. "And sisters:" this relates to the allotment of a sufficient sum to defray their nuptials. As for the remark of CULLÚCABHATTA, that uterine brothers and sisters shall assemble and divide equally the vested share of their uterine brother, it must be affirmed that his meaning is the same: he cannot intend that their rights shall be equal; for it is no where seen that sisters inherit the property of their brothers, and the text is well explained as relating to the allotment of a sufficient sum to defray their nuptials. As for another observation of CULLÚCABHATTA, that, among brothers by the same and by different mothers, they alone who use the same furniture and utensils, having made a common stock of their several effects, shall divide his share, not all the brothers by the same or by different mothers: here also his meaning must be understood to be the same; re-united brothers by a different mother inherit only on failure of a re-united one by the same mother.

"Uterine sisters," not given in marriage: they afterwards belong to the family of their husbands. So the *Pracáśa*, cited in the *Retnácara.*

CCCCXXXI.

YAMA:—Immovable undivided property shall be the heritage of all the brothers, *be their mothers the same or different;* but immovable property, when divided, shall on no account be inherited by the sons of the same father only.

The meaning therefore is, 'all brothers, whether sons of the same father and mother, or of the same father only.' JÍMÚTAVÁHANA.

If any immovable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in co-parcenary, the half-brothers shall have equal shares with the rest; but the uterine brother has the sole right to divided property movable or immovable. The text of *Vrihat*, MENU likewise intimates the same, by alluding to a distinction in respect of immovable property, when the subject proposed was already ascertained by the former part of the text (CCCCXXVIII). This maxim, say lawyers, should be likewise adduced in the case where no re-union has taken place.

Even a son given, provided he be virtuous, is *considered as* allied by the whole blood, if he were accepted by the mother of the son born in lawful wedlock; but, if not adopted by her, he is *considered as* a half-brother, for; in the case of a son given and the rest, adoption is acknowledged to be equivalent to procreation.

On the death of one who has received the inheritance of his brother, his own son or other heir claims the succession, not the son of any other brother; for he has no lien on the property of his uncle, the estate having already devolved on a collateral relation. Such is the succession of brothers.

VI. On failure of them, the son of a brother is heir, by the texts of YÁJNYAWALCYA and VISHNU (CCCXCVIII, CCCCXVII;) and because he offers two funeral cakes to ancestors of the late proprietor, one to his father, the other to his paternal grandfather. A brother's son has not an equal claim with a brother; for VISHNU says, "if he be dead, it goes to the brother's son;" "and he" must relate to the nearest term "brother:" and YÁJNYAWALCYA intimates, that, in default of brothers, their sons inherit, by saying, "on failure of the first of these, the next in order shares the estate:" and a brother, who is the giver of six funeral cakes, or of three (*if he be son of the same father only*), which it was incumbent on the late proprietor to offer, is superior to the brother's son, who is giver of two funeral cakes, which the late proprietor was bound to present to his father and paternal grandfather. JÍMÚTAVÁHANA concurs herein. As for the assertion, that the son of a living brother does not inherit, merely because he confers no benefits, since he does not offer the funeral cakes, that is futile; for it might be thus supposed, that a son of another deceased brother would inherit *in preference to his uncle;* and you must admit, that, on failure of other brothers, the son of a living but degraded brother does inherit: assuming the natural claim of a nephew, whose father is alive, like that of a daughter's son, whose parent is living, he might have a right of succession. Neither can it be affirmed, that the paternal uncle ought to have an equal claim with the brother's son, because he offers funeral cakes to the paternal grandfather and great-grandfather of the late proprietor. The brother's son has a superior claim, because he presents an oblation to the *late proprietor's* father, who is the person chiefly considered. Thus JÍMÚTAVÁHANA. The father is indeed pre-eminent; because a man has no right to perform a *śráddha* for his paternal grandfather or other ancestor, unless he have a right to perform one for his sire; and the father is nearest of kin *to the late proprietor.*

Here again a distinction must be admitted: the son of an uterine brother has the first claim, because he confers benefits on the mother of the late proprietor; for it appears from a text cited by JÍMÚTAVÁHANA, RAGHUNANDANA and the rest (CCCCXXXII), that the father's natural mother

also shares with her husband the funeral cake offered by a son's son; but those benefits cannot be conferred by the sons of half-brothers: *however*, on failure of other nephews, the son of a half-brother may inherit.

CCCCXXXII.

The mother shares with her husband obsequies solemnly performed *by his son*; the paternal grandmother, with her husband; and the mother of the paternal grandfather, with her's.

If any one nephew be re-united, shall he alone take the whole, or shall he share it with all the sons of brothers? It should not be argued, that a brother's son, being re-united, has the sole right of succession, by the general maxim above cited (CCCCXXVI). That text being propounded in the course of treating upon the Succession of Brothers, must be taken specially, as relating solely to that subject. Such being the case, it was vain to mention the re-union of a nephew with his paternal uncle: this should not be affirmed. They are all mentioned to authorize that re-union, because they thereby become similar to undivided co-heirs by having common duties and common income and expense. MENU and VRĬHASPATI have only ordained the *preferable* claim of a re-united brother; and no legislator has expressly declared the title of a re-united uncle or nephew. As for the text of NÁREDA (CCCCXXXIII), that also, from its coincidence with the precept of VRĬHASPATI, must be considered as relating to the same subject.

CCCCXXXIII.

NÁREDA:—The *vested* share of re-united brothers is declared to belong exclusively to them: in any other case than this, they shall not *exclusively* share the inheritance of the deceased; it shall go to other brothers, when no issue is left.

That which is the vested share of re-united brothers belongs exclusively to them; in any other case, that is, if the deceased were not re-united, they who were shall not share the inheritance; that is, they shall not take the entire allotment of the deceased. Then, who shall receive that share? The legislator replies, "it shall go to others," that is, to other brothers. Or the sense may be, 'in any other case, that is, on failure of re-united brothers, it shall go to others not *naturally* entitled to partake of the share;' that is, to other brothers: share here signifies the property or inheritance; the natural partakers of it are obviously the sons; it goes to others, that is, to brothers. Or the sense may be, 'when half-brothers are re-united, such re-united brothers by different mothers may inherit from each other; in any other case, that is, if they be not re-united, half-brothers do not share the inheritance, but it shall go to others, namely, to the full brothers.' CHANDÉSWARA says, the meaning is this: in any other case, that is, on failure of re-united brothers, it shall go to others, not *first* entitled to share the inheritance, or who do not claim the succession in right of re-union. But the author of the *Pracáśa* thus expounds the text: "than this" alludes to something understood, namely, to the case of one who leaves no male issue: in any other instance, that is, if he do leave male issue, the re-united brothers shall not share the inheritance; but when they die childless, it shall go to others, namely, to brothers and the rest. The mention of re-union is solely intended for the succession of brothers; hence it is not specially considered in the

case of a brother's son: if this be affirmed, it may be answered, the author of the *Dípacalicá* does not concur in that opinion; for, in expounding the text of YÁJNYAWALCYA (CCCCXXVI), he subjoins the term "or other parcener" after the word "brother," and delivers this gloss: the share of a brother or other parcener dying after re-union, another re-united brother or co-heir shall take. Consequently, the maxim must be established on the sense conveyed by the phrase "a re-united parcener shall receive the vested share of a re-united one" (CCCCXXVI): and that sense may be thus expressed; the re-united co-heir alone shall take the estate, if there be others related in the same degree, but not re-united: it exhibits an exception to the general rule of inheritance deduced from another text. Thus, if a father, having made a partition among his sons in his life-time, and becoming re-united with any one of them, die after the lapse of a few days; in that case, the re-united son, and no other, shall inherit his property. Accordingly MISRA affirms, that, in the case of re-union between parent and child, the re-united son alone, not the disunited one, obtains the share of his father, although another separated son be living; for it is declared, without reservation, that a re-united parcener receives the inheritance from a re-united one: and the re-union of father and son has been also propounded by a text above cited (CCCXXX). What is thus affirmed by him, is alone just; for the claim of other sons on the property of their father was annulled by partition, and the right of the re-united son was revived by re-union.

It must be here inquired, how the remark, that their property is annulled by partition, can be apposite? for, while the father lived, the son had no right to his wealth before the distribution of it, and the text of YÁJNYAWALCYA (XCII) merely implies, that partition of an estate inherited from the paternal grandfather may be made at the will of the son: even admitting the literal sense of that text, sons could never have a claim on the wealth acquired by the father himself.

In saying 'the right of sons was annulled by partition,' the meaning is this: the son naturally had a claim on the property of his father by birth alone, under the rule of GÓTAMA (Ch. I, Sec. I, Art. I,); but, not being then independent while the father was living, since the text of CÁTYÁYANA expresses, "a son becomes independent after the death of both his parents" (Book II, Chap. IV, v. XV 5), he had no title to *claim* partition or the like; but after the death of his father he has such a right: this is declared by DÉVALA in these terms, "they have not ownership while a faultless father lives" (V), that is, they have not independent dominion, although they have a proprietary right. It is not said in the law, YÁJNYADATTA has not ownership of the property of DÉVADATTA: nor is a son destitute of right to the paternal estate, while his mother survives; consequently, such a title only is annulled by partition. If it be said, this is the meaning intimated by VÁCHESPATI MISRA, the answer is, that opinion is not confirmed by JÍMÚTAVÁHANA and the rest: were it even admitted by them, it would not be here affirmed; for, if a father, having made a partition with his sons, die after re-uniting himself with any other parcener whomsoever *it would follow, that* his property could not be inherited by the divided sons: but no other persons ought to take the succession while sons live, since none can like them have a present right to his property.

The commentator observes, 'it should not be affirmed that it is not so, because the text contains an exception, "this law concerns him who leaves no issue" (CCCCVII); for that relates to a son born after partition.' To

this again it may be objected, that the word "this," occurring in the text of the legislator, must, if possible, be referred to the law propounded by him, *that is*, to the claim of a re-united brother by the same mother on the property of a re-united one, and to the succession of a disunited brother by the same mother, on failure of such re-united brothers, propounded in the text immediately preceding it; not to a distinction founded on re-union, for VRĬHASPATI has not, like YÁJNYAWALCYA (CCCCXXVI), noticed *such a distinction*. It is improper to reject, without sufficient cause, the law promulged by the legislator himself, and assume one propounded by another author as intended by the word "this:" and there is no proof, that the expression "his share shall devolve on his uterine brother," should be explained as signifying generally the right of any one re-united parcener to inherit the property of another. In like manner, there is no argument to prove that the terms "who leaves no male issue" relate to a son born after partition. Hence this text (CCCCXXVI) is intended to propound a distinction founded on re-union, when there is a competition of heirs related in the same degree: the re-united parcener alone shall therefore take the heritage, if there be whole brothers, or half-brothers, or paternal uncles, or others as near of kin to the deceased; for no distinction is found in that phrase; and the preceding text related to all *re-united parceners*, and a question may arise on *the claims of* all. Hence, it should not be admitted that this text relates to brothers only. So JÍMÚTAVÁHANA and RAGHUNANDANA. The words "and the rest" being inserted in the expression "paternal uncles and the rest," many lawyers thus state the opinion of JÍMÚTAVÁHANA: a son might be here comprehended under the terms "and the rest;" but that is not elegant; for, since he has precedence above all other heirs, he ought to be first mentioned: or the son of a paternal uncle and the rest might be comprehended, but that is not the opinion of RAGHUNANDANA. Yet in fact both ought to be included, conformably with *the sentiments of* MISRA and CHANDÉSWARA. On the death of him who, having made a partition, re-united himself with his paternal uncle in preference to his own brother, would not the brother and paternal uncle have equal claims? If it be said they are not related in the same degree, *the answer is*, the same might be supposed of brothers by one or more mothers. To the question proposed the answer is, they have not equal claims; *for* the title of brothers in right of fraternity is alone propounded by the text (CCCCXXVIII).

We resume the subject. The right of a nephew or other parcener who has returned to the family being thus proved, the re-united son of an uterine brother has the first claim: on failure of him, such a son of a half-brother, and the disunited son of a whole brother, have equal claims: on failure of either of them, the other is heir: if there be neither one nor the other of these claimants, the disunited son of a half-brother is heir. In respect of immovable undivided property, no author has said, that nephews of the whole and half-blood have equal claims, by parity of reasoning, as in the case of brothers; and the text of the legislator is not explicit on this point.

Has the son of a re-united brother a special title or not? There is no law on this subject; nor is the son of a re-united parcener acknowledged to be so himself, for there is no proof of it. If he be not considered as a re-united co-heir, the right of deduction in favour of the eldest might be supposed when he makes a partition with his paternal uncle; for the text (CCCCVII) only denies the right of the first-born, when partition is

made among re-united parceners. Nor should this be deemed admissible; for it is inconsistent with the reason of the law. Admitting that he is not a re-united co-heir, still he is an undivided one; and, as such, he ought therefore, by parity of reasoning, to take the heritage like a re-united parcener, although separated co-heirs be living. When this is demonstrated, then the son of a re-united parcener, so long as partition be not made, shall take the heritage, although separated co-heirs be living, who are equally near of kin to the deceased. Accordingly, if two or four brothers have not made a partition, the property of one undivided brother shall devolve on the other: in like manner, if a man have made a partition with his children, and a son born afterwards die leaving male issue, such a grandson alone shall inherit the property of his paternal grandfather; not the son with whom partition had been already made, nor his male descendant. Some authors thus expound the law.

But, in fact, since it is only declared that a re-united parcener shall alone take the inheritance, the undivided co-heir shall not succeed *in preference to others*: in the case of four brothers, above stated, it is admitted that two *remaining in co-parcenary* shall be considered as re-united after partition; for shares must be allotted to all, that the portions may be made equal, as required by the law before cited (XXXIX 1). The son born after partition is sole heir of the whole property left by the father, under a text above quoted (C); but no law is found by which his son shall become sole heir. What share shall he receive? If he may take the allotment which was due to his father, under a text formerly cited (LXXIX), the remainder of the paternal estate was the due allotment of his father; and he shall therefore obtain it. *To the question thus proposed the answer is*, he shall take so much as would have been the share of his father, *supposing him* not *to have been* transcendently virtuous. It should not be objected, that the sons of those with whom partition was formerly made, would not only take the shares formerly allotted, but also receive part of the wealth reserved by the paternal grandfather, whilst the son of a son born after partition would only receive a share of the wealth so reserved by his grandsire, which would be an unjust disparity. It must unavoidably be admitted: without express authority of law, no inference can be established from *apparent* disparity. Other authors contend, that the law should be so expounded.* Such is the succession of a brother's son.

VII. On failure of him, the son of a nephew shall inherit, by the text of YÁJNYAWALCYA (CCCXCVIII); for kinsmen related by the funeral cake are determinately intended by the terms kindred sprung from the same original stock; and the succession of the nearest *sapinda* is ordained by the text of MENU.

CCCCXXXIV.

MENU:—To the nearest *sapinda*, *male or female*, after him in the third degree the inheritance next belongs; then, on failure of *sapindas*, and of their issue, the *samánódaca*, or distant kinsman,† shall be the heir; or the spiritual preceptor, or the pupil, *or the fellow student, of the deceased.*

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* The first seems the better opinion. T.

† *Saculya.*

Whether proximity by birth, or by the relation of the funeral cake, be *preferred*, the paternal uncle is in both views nearer *of kin* than the grandson of a brother; for he is son of the father of the *late* proprietor's father, and offers two funeral cakes, which he was bound to present; and surely the paternal grandfather is nearer of kin, for he is father of the late proprietor's father, *would have* shared the funeral cake offered by him, and gives an oblation, which he was bound to present to the paternal great-grandfather. On this point JÍMÚTAVÁHANA remarks, the grandson of a brother bars the paternal uncle, because he offers a funeral cake to the deceased proprietor's father, who is chiefly considered; but the great-grandson of a brother, though a descendant of the proprietor's father, is barred by the paternal uncle, because he is fifth in descent, and is *therefore* excluded from the oblation of a funeral cake.

Would not the brother of the paternal grandfather be in like manner heir, although a great-grandson of the same ancestor be living; and would he not have an equal claim with the grandson of the paternal grandfather? To this we reply, "nearest" here signifies proximate both by birth and by the funeral cake; consequently, he who is nearest of kin to the late proprietor by birth and by the funeral cake, and who is most immediately connected both by descent and by oblations, shall take the property. It should not be objected, whence is this deduced; and why is not proximity to the deceased proprietor solely propounded? Nearness of kin is not the sole cause of succession, but connexion by the funeral cake does also co-operate; and hence it appears that the benefits conferred are the grounds of the claim: now, the benefits conferred by the nearest of kin are more important than those afforded by one who is more distantly related; remote kindred ought therefore to inherit only on failure of nearer kinsmen. Thus, since the son of a daughter confers benefits by the oblation of a funeral cake, and since it is recorded in the *Mahábhárata* that even his birth alone is beneficial to his maternal grandfather (CV), therefore, the son of a daughter, conferring benefits on her father, is mentioned by JÍMÚTAVÁHANA as heir, on failure of the great-grandson in the male line. The order of *succession by* nearness of kin is proximate to the proprietor himself. Hence a person who confers benefits on the last possessor himself is first heir; after him, the father of the late proprietor, being most near; if he be dead, the persons who confer benefits on the father in the order of proximity to him; on failure of these, the paternal grandfather and the rest comparatively near; on failure of the ancestor, he who confers benefits on him. Accordingly the brother is sole heir, although a nephew capable of performing obsequies be living; for the brother is nearest to the father. It should not be objected, that the son, as well as the father, is most near to the late proprietor; and the great-grandson of that son, conferring benefits on him, might therefore claim the inheritance. He does not afford those benefits which the late proprietor was bound to confer on his ancestors.

Such being the case, is not the separate specification of the brother's son superfluous, since he is also suggested by the mention of kinsmen sprung from the same original stock? Nor should it be answered, that he is separately mentioned for the sake of exhibiting a distinction, because there are various sorts of brothers and nephews. Were it so, the paternal uncle ought likewise to be separately mentioned, because that is equally true of him. To the question thus proposed the answer is, No; for the brother is heir, on failure of the father and the nephew, in default of brothers; thus succession follows the order of proximity, that is, the course of benefits con-

ferred on the nearest of kin: it does not follow such an order of proximity, by which the paternal grandfather would be *first* heir on failure of the father; nor has the paternal uncle an equal claim with the brother's son: he is therefore separately mentioned, for the sake of showing the order of succession in right of proximity by birth and the like, and for the purpose of denying a concurrent title of three descendants of the father, like that of three descendants of the proprietor himself, namely, his son, and his grandson, and great-grandson, *whose father and paternal grandfather are deceased*. Consequently, on failure of nearer claimants, including the daughter's son, the father is heir; in default of him, the mother; after her, the brothers; if they be dead, a brother's son; next, a brother's grandson in the male line; and after him, the son of the father's daughter: such is the path indicated by JÍMÚTAVÁHANA. But SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on his treatise, contends, on the reason of the law, that the son of a son's daughter, and the son of a grandson's daughter, also claim the inheritance, because they confer benefits on their maternal great-grandfather, and on the father of a maternal great-grandmother. How can a daughter's son and the rest be considered as kinsmen sprung from the same original stock? Because the term is used in the sense of race or lineage *any how descending* therefrom; and the son of a daughter mediately springs from that stock. It should not be objected, that, were it so, a sister and the rest might claim the inheritance, because they confer benefits by means of their son or other descendant. Their claim is obviated by a text above cited (CCCCXIII), and by BAUDHÁYANA, declaring women to be in general incapable of inheritance: this does not contradict the right of wives and the rest, which is propounded by special texts. So JÍMÚTAVÁHANA.

In the succession of brother's sons, a distinction between the whole and half-blood must be understood, not in the case of daughter's sons. But some lawyers consider it as the opinion of JÍMÚTAVÁHANA, that, in the succession of the sons of the father's daughters and so forth, a distinction is taken between uterine and half-sisters. Herein SRÍ CRÍSHNA TERCÁLANCÁRA does not acquiesce, because no law is found *expressly* declaring the participation of a maternal grandmother in the funeral cake offered to the maternal grandfather. Thus, on failure of the father's issue including daughters, the paternal grandfather is heir to the property, because he is nearest to the deceased; on failure of him, the paternal grandmother; such being the order of succession deduced from the text of MENU (CCCCXXIV), and from her participation in the funeral cake offered by her son's son (CCCCXXXII): and the reasoning holds good, that as a mother succeeds on failure of the father, so shall the paternal grandmother succeed in default of the paternal grandfather. On failure of them, their issue, including the son of a daughter, shall inherit; and in the succession of the paternal grandfather's son, grandson, and great-grandson, the same distinction must be admitted as before, in respect of their relation to the *late proprietor's* father by the whole or half-blood, because the paternal grandmother shares the funeral cakes offered by her descendants, and the wife of a paternal grandfather does not share the oblations presented by the descendants of another wife of her husband: but no distinction is taken in the case of daughter's sons, because the maternal grandmother does not share the funeral cake offered by her daughter's son.

Next, on failure of issue of the paternal grandfather, including his daughter's son, the paternal great-grandfather is heir; in default of him, the

paternal great-grandmother, because she shares the funeral cake offered by her great-grandson. This observation of JÍMÚTAVÁHANA and RAGHUNANDANA should be respected. It must not be argued, that, in the want of an express law, her succession is forbidden by the general maxim above cited (CCCCXIII). A man should not affirm, of his own authority, that no such special ordinance exists; for the ocean of the law has not been traversed. On failure of her, the descendants of the paternal great-grandfather, including his daughter's son as before, successively claim the inheritance. Here again a distinction must be admitted in the succession of the paternal great-grandfather's son, son's son, and grandson's son, according to their relation to the paternal grandfather by the whole or half-blood; but not in the instance of his daughter's son. Such is the succession of kinsmen sprung from the same original stock.

VIII. On failure of them, a more distant kinsman is heir, by the text of YÁJNYAWALCYA (CCCXCVIII). In default of issue of the paternal great-grandfather, including his daughter's son, the maternal grandfather and the rest, who would have shared the funeral cakes which the deceased would have been bound to offer; and they who present funeral cakes to such ancestors inherit in the order of proximity, namely, the maternal grandfather, the maternal uncle, his son, and son's son; the maternal great-grandfather, his son, son's son, and grandson's son; the father of the maternal great-grandmother, his son, son's son, and grandson's son: on failure of the first respectively, the next in order is heir. Again; their daughter's sons have a title as givers of funeral cakes to the maternal grandfather, to his father, and to the father of this maternal great-grandfather; consequently, on failure of issue of the maternal grandfather, including his daughter's son, the descendants of the maternal great-grandfather, also including his daughter's son, successively take the inheritance. In this sense does YÁJNYAWALCYA use the term kindred. Such is the rule approved by SRÍ CRÍSHNA TERCÁLANCÁRA, who follows the opinion of JÍMÚTAVÁHANA.

On failure of the giver of a funeral cake to be shared by the deceased, *and in default* of a son of the father's daughter, who gives three funeral cakes which the deceased was bound to offer to his own father and the rest, and so forth, the maternal uncle and others, who present oblations which the deceased was bound to offer to his maternal grandfather and the rest, claim the inheritance in the order of proximity. JÍMÚTAVÁHANA.

It should be here remarked, that the son of a son's and of a grandson's daughter, and the son of a brother's and of a nephew's daughter, and so forth, claim succession, in the order of proximity, before the maternal grandfather; for they also confer benefits by the oblation of funeral cakes. It must not be objected, that, were it so, the son of a grand-daughter would have a prior title, even though the father be living, in as much as he gives a funeral cake to *the deceased* himself. The oblations presented to the maternal grandfather and the rest are secondary, because they must follow funeral cakes offered to paternal ancestors; the son of a grand-daughter can have no claim, while the giver or sharer of a principal oblation exists. Nor should it be objected as a consequence, that the son of the late proprietor's daughter, or of his father's daughter, and so forth, could have no title, if any kinsman within the degree of a *sapinda* were living. The *Mahábhárata* showing that a daughter's son procures advantage even by his birth alone (CV), it appears that he does confer important benefits. SRÍ CRÍSHNA TERCÁLANCÁRA concedes to this opinion. Such is the succession of maternal kindred.

IX. On failure of them, a distant kinsman allied by family (*saculya*) is heir by the text of MENU (CCCCXXXIV). "A kinsman of the same family" is the father of the paternal great-grandfather and his issue, and so forth, and is called *samánódaca:* such kinsmen claim the inheritance in the order exhibited. So JÍMÚTAVÁHANA.

They who are partakers of the rice and clarified butter wiped off the hand, with which the funeral cakes have been offered, are *saculyas:* such is the meaning. JÍMÚTAVÁHANA expounds the text of BAUDHÁYANA (CCCXCVII), three persons ascending from the father of the paternal great-grandfather, and three descending from the son of the great-grandson, do not participate in the same funeral cake, and are therefore pronounced kinsmen allied by family, and sharing divided oblations.

It should be noticed, that among the *sapindas* rendered impure by reason of a dead kinsman, three are also considered as such in respect of inheritance, and three as *saculyas.*

CCCCXXXV.

The fourth person and the rest share the remains of the oblation wiped off *with* cuśa *grass* ; the father and the rest share the funeral cakes; the seventh person is the giver of oblations ; the relation of *sapindas,* or men connected by the funeral cake, extends *therefore* to the seventh person, *or sixth degree of ascent or descent.*

In the first place, the son of the great-grandson is heir, because he offers the remains of the funeral cake to the proprietor, to his father, and to his grandfather; next the grandson of the great-grandson, and after him the great-grandson of the great-grandson in the male line; on failure of these, the paternal grandfather's paternal grandfather, because he *would have* shared the remains of the funeral cake wiped off by the proprietor for the sake of ancestors; if he be dead, his son and other descendant to the third degree have successive claims: on failure of these, the daughter's son of the paternal grandfather's paternal grandfather, and other givers of a funeral cake in the triple set of oblations, inherit in order; in default of them, the son, grandson, and great-grandson of the great-grandson of the grandfather's grandfather in the male line, have successive claims as givers of the remains of funeral cakes to the paternal grandfather's paternal grandfather: on failure of them, the paternal great-grandfather's paternal grandfather is heir; if he be dead, his son, grandson, or great-grandson in the male line, his daughter's son, the son of the great-grandson in the male line, and the son of that great-grandson's son, *and the son of this last-mentioned descendant,* have successive claims as before; on failure of them, the paternal great-grandfather's paternal great-grandfather, his son, grandson, and great-grandson, his daughter's son, the son, grandson, and great-grandson of his great-grandson, similarly inherit in order: on failure of all these, the *samánódacas,* or persons connected by an equal oblation of water, have a right to the inheritance. Now the relation of *samánódacas* extends to the fourteenth person, by the following text:

CCCCXXXVI.

But the relation of *samánódacas,* or those connected by an equal oblation of water, ceases with the fourteenth person.

CCCCXXXVII.

VRĬHASPATI :—On failure of them, uterine brothers, or brother's sons, paternal and maternal kinsmen, pupils, or learned priests, are entitled to the wealth of the deceased :

2. If a man die leaving no issue, nor wife, nor brother, nor father, nor mother, let all kinsmen, related by the funeral cake *in equal degree*, divide his inheritance in due proportions.

3. But half the collected wealth should be first set apart for the benefit of the deceased, and carefully appropriated to his monthly, six-monthly, or yearly obsequies.

4. Where many claim the inheritance of a childless man, either paternal or maternal, or more distant kinsmen, he who is the nearest of them shall take the estate.

Let half the estate be set apart to defray the obsequies of the deceased. Such is the sense.

Among these, the eighth ancestor, and his son, grandson, great-grandson, daughter's son, and the rest, as far as the fourteenth in descent counted from the eighth ancestor, successively claim the inheritance: the same must be understood in respect of the ninth ancestor and the rest; for nearness of kin and superior benefits are entitled to respect in every case. Men connected by equal oblations of water are allied by family; and on failure of such kinsmen *as partake of the remains of funeral cakes*, those who are connected by equal oblations of water are heirs, as suggested by the term "kinsmen allied by family;" for it is so remarked by JÍMÚTAVÁHANA. Such is the succession of kinsmen.

X. On failure of them, the spiritual preceptor is heir; if he be dead, the pupil; by the text of MENU (CCCCXXXIV). JÍMÚTAVÁHANA.

In default of an order *of succession* suggested by the sense or terms *of the text*, the order suggested by the *literal* reading is respected: such is his notion. The word kinsman or connexion, as employed by YÁJNYAWALCYA (CCCXCVIII), must include the spiritual preceptor: there is consequently no deficiency in the text of YÁJNYAWALCYA. But others contend, since the spiritual preceptor stands in the place of a father, and the pupil in that of a son, therefore the spiritual preceptor inherits only on failure of the pupil. That is futile; for a similar reading occurs in the texts of BAUDHÁYANA and others, and YÁJNYAWALCYA declares, that a fellow student in theology takes the succession on failure of the pupil, (CCCXCVIII).

CCCCXXXVIII.

BAUDHÁYANA :—On failure of kinsmen connected by the funeral cake, kinsmen allied by family shall inherit; in default of them, the spiritual preceptor, the pupil, or the priest hired to perform sacrifices, shall take the inheritance; and lastly, on failure of them, the king.

The term spiritual preceptor (*áchárya*) signifies him who invests the pupil with the sign of his class, as expressed in the text.

CCCCXXXIX.

He who girds the pupil with the sacrificial cord, and instructs him in the *Véda*, is called an *áchárya*.

SRÍ CRĬSHNA TERCÁLANCÁRA concurs in this exposition. A fellow student in theology is he who studies the *Véda* under the same preceptor. In default of him, descendants from the same ancient Sage claim the succession; on failure of them, men sprung from the same branch of a venerable stock, by the text of GÓTAMA (CCCCXL). So JÍMÚTAVÁHANA.

CCCCXL.

GÓTAMA:—Let those kinsmen take the inheritance, who give the funeral cake, *who offer the remnant and water only*, who are descended from the same holy Sage, or, *lastly*, who spring from the same company of *Rĭshis*.

But some hold, that the spiritual teacher and the rest could only inherit on failure of descendants from the same branch of a venerable stock or company of *Rĭshis*, in conformity with the order *of succession* stated in the text of GÓTAMA; and there is no difficulty in comprehending kinsmen descended from the same holy Sage, or from the same company of *Rĭshis*, in the texts of YÁJNYAWALCYA, VRĬHASPATI, and BAUDHÁYANA, under the terms "distant kinsmen," and "allied by family:" as the phrase, "kinsman allied by family," which is used by MENU (CCCCXXXIV), is acknowledged by JÍMÚTAVÁHANA to include the *samánódacas* or kinsmen connected by equal oblations of water, so may the term be similarly extended in the present instance also, agreeably to the coincidence of the text of GÓTAMA. That opinion is questionable.

Others contend, that the stipendiary priest is heir immediately after the pupil, in preference to such distant kinsmen, by the text of BAUDHÁYANA (CCCCXXXVIII); and he ought to have the first title, because he was more immediately connected *with the deceased*, than the fellow student in theology.

But MISRA says, the succession may be thus briefly stated: the son *is first heir;* on failure of him, the son's son; in his default, the great-grandson by males: if no such issue be left, the virtuous wife; on failure of her, the daughter; after her, the mother; if she be dead, the father; for want of him, the brother; in default of him, his son; on failure of the nephew, the *sapinda*, nearest of kin to the deceased; after him, the more distant *sapindas* in order; if there be none such, the nearest *saculya*, or kinsman allied by family; next, the more distant *saculyas* in order; if there be none, the daughter's son; in default of him, the mother's family and the rest; on failure of all *other* heirs, the king, excepting the property of a *Bráhmana;* but in the case of wealth left by a priest, another honest *Bráhmana* is alone entitled to take the inheritance.

On failure of persons descended from the same primitive stock, a kinsman *in general* is heir; and by that term is meant a relation of the deceased himself, of his father, or of his mother.

CCCCXLI.

The sons of his own father's sister, and those of his own maternal uncle, must be considered as his own kinsmen.

In like manner there are kinsmen of the father and of the mother, such as their father's sister's sons, mother's sister's children, and maternal uncle's issue; these take the succession in order, as MISRA also observes. Consequently these are comprehended in his recapitulation, by the terms, "on failure of him, the mother's family and the rest."

Here authors deduce from the form of succession delivered by JÍMÚTAVÁHANA, that, on failure of kinsmen allied by the funeral cake, or by family *name*, the son of the father's maternal uncle, or of the father's sister, or of the mother's maternal uncle, or of the mother's sister, are likewise heirs. That is not accurate; for, since these are inferior to the father's maternal grandfather, and mother's maternal grandfather and others, it is improper, without the authority of express law, to affirm the title of the father's maternal uncle's son and the rest; and the word (*bandhu*) being taken in its accepted sense, obviously signifies the kinsmen of the proprietor himself; and their title is in effect thereby established: this we hold reasonable.

On failure of heirs, including kinsmen sprung from the same branch of a venerable stock, the succession devolves on *Bráhmanas* by the text of MENU.

CCCCXLII.

MENU:—On failure of all those, the legal heirs are such *Bráhmanas* as have read the three *Védas*, as are pure *in body and mind*, as have subdued their passions; *and they must consequently offer the cake:* thus the rites of obsequies cannot fail.

"Have read the three *Védas*;" have studied all the *Védas*.

"Thus the rites of obsequies cannot fail," that is, rites which would be lost by *the estate* being enjoyed *without performing obsequies for the deceased*, being completed in consequence of the transfer of *that* duty to another by the descent of the property to a *Bráhmana*, do not fail. JÍMÚTAVÁHANA.

Thus the rites, namely, the obsequies of the deceased proprietor, cannot fail. CULLÚCABHATTA.

Others explain the text, on failure of heirs, including kinsmen sprung from the same branch of a venerable stock, since the wealth of the deceased goes to *Bráhmanas*, the king, pursuing proper conduct, does not violate justice.

Since it must *at all events* be said "on failure of these," therefore *the word* all, *as here* used by MENU, must be intended to intimate the right of *all* heirs before mentioned, including men sprung from the same branch of a venerable stock or company of *Rishis* and the rest. Such is the opinion of CULLÚCABHATTA.

The want of heirs descended from the same holy Sage, or from the same company of *Rishis*, and the failure of *Bráhmanas*, must be understood *to be the non-existence of any such person* in the same town, else the escheat to the king could never take place. JÍMÚTAVÁHANA.

The falling *of estates* to the sovereign is mentioned in a contiguous sentence. MENU declares, that, on failure of virtuous *Bráhmanas* residing in the same town, the inheritance of a *Cshatriya* and the rest shall escheat to the king.

CCCCXLIII.

MENU :—The property of a *Bráhmana* shall never be taken *as an escheat* by the king; this is a fixed law: but the wealth of the other classes, on failure of all *heirs*, the king may take.

"On failure of all heirs," including honest *Bráhmanas*. "The other classes;" other than the sacerdotal tribe; namely, the military class and the rest. But the wealth of a *Bráhmana* must never be taken by the king: consequently, on failure of honest *Bráhmanas*, he must give the property of a priest to *Bráhmanas* in general. Such is the notion of CULLÚCA-BHATTA. The wealth of other classes, in default of heirs including kinsmen sprung from the same branch of a venerable stock, the king should give to honest *Bráhmanas;* on failure of them, he may take it himself as an escheat. Such is the opinion of JÍMÚTAVÁHANA.

But MISRA and the rest hold, that the first text of MENU (CCCCXLII) relates to *the property of Bráhmanas*, but the wealth of *Cshatriyas* and the rest shall be taken by the king alone. Such being the rule of decision, why may he not likewise take the estate of a priest? To obviate this doubt, the legislator first ordains, that the property of a *Bráhmana* shall not be seized by the sovereign. Accordingly, BAUDHÁYANA declares the taking of holy property reprehensible in a king.

CCCCXLIV.

BAUDHÁYANA :—Holy property, unduly appropriated, kills a son and a son's son; for it destroys like the most exalted poison: therefore the king shall on no account take the property of a *Bráhmana*.

"Destroys a son and a son's son;" kills them also. The property of a *Bráhmana* is indeed the most deadly poison *to the sacrilegious spoiler*.

The *Retnácara*.

Must it not be affirmed, that this text shows it highly reprehensible to take wealth from a *Bráhmana* by force, fraud, or the like, *but not so to take it without violence as an escheat?* No; for the text of DÉVALA is explicit.

CCCCXLV.

DÉVALA :—In every case the king may take the wealth of a subject dying without an heir, except the estate of a priest; for the property of a *Bráhmana* dying without an heir must be given to learned priests.

"Heir;" taker of inheritance: the term is regularly derived in a dative sense.

CCCCXLVI.

VRĬHASPATI :—The king takes *as an escheat* the wealth of those *Cshatriyas*, *Vaiśyas* and *Śúdras*, who leave no son, nor wife, nor brother; for he is lord of all.

In this text, by declaring that he may take the wealth of *Cshatriyas* and the rest, it is intimated that the property of a *Bráhmana* shall not be taken.

CCCCXLVII.

SANC'HA and LIC'HITA:—The property of a learned priest descends to *Bráhmanas*, not to the king; wealth consecrated to the gods, or allotted to priests, must not be seized by the sovereign, nor a deposit open or sealed, nor wealth regularly inherited, nor the property of infants or women: thus the *Véda* expresses,

"The inherited property of a woman must not be seized by the king, nor *acquired* effects of an infant, nor the wealth of a woman received in the six modes of acquisition, nor the patrimony of infants."

The term which occurs in this text (*parishad*) signifies a *Bráhmana*. The *Viváda Retnácara* and *Viváda Chintámeni*.

"Deposits" and the rest, are terms employed indefinitely: hence the property consecrated to the gods, or allotted to priests, must on no account be taken by the king, unless as a fine or the like. A sealed deposit is a distinct sort of bailment, deposited under seal. "Wealth regularly inherited," alludes to partrimony; it is property which has descended *to the possessor* from another. So the *Madana Párijáta* and *Retnácara*.

The seizure of a *Bráhmana's* property being forbidden in these texts, on whom shall the estate of a *Bráhmana* devolve? This question arising, and the words of DÉVALA (CCCCXLV) bearing the same import, the text of MENU (CCCCXLII) must relate to the sacerdotal class only. Consequently, on failure of heirs, including kinsmen sprung from the same branch of a venerable stock or company of *Rishis*, the estate of a *Bráhmana* descends to learned priests, and the property of any other person escheats to the king; the wealth of the military and other classes does not go to learned priests. Such is the result. Accordingly, the text of NÁREDA also exhibits the right of the king to the escheat, on failure of daughters and the rest, not in default of heirs including priests.

CCCCXLVIII.

NÁREDA:—On failure of daughters *the heirs* are, kinsmen allied by family, more distant kindred, and men who claim the same origin *with the deceased*; on failure of all *these*, the property escheats to the king,

2. Excepting the wealth of a *Bráhmana*; but a king, attentive to his duty, shall allot a maintenance to the wives of the deceased: this is declared to be the rule of inheritance.

Kinsmen allied by family are sons of paternal uncles and the rest. Men who claim the same origin are persons belonging to the same tribe. But all this supposes the widow to be deficient in good qualities.

The *Retnácara*.

By "persons belonging to the same tribe," it is not meant that any *Cshatriya* is heir of a *Cshatriya*, and any *Vaisya* of a *Vaisya*; for that would be an unprecedented construction: but it must be understood, from the coincidence of the text of GÓTAMA (CCCCXL), that 'similar origin' intends similarity of descent from a holy Sage or from a company of *Rishis*. MISRA and the rest thus expound the law.

"This supposes the widow to be deficient in good qualities;" that is, the wife left by a *Cshatriya* or other man of inferior class: but in the case of a *Bráhmana's* widow deficient in good qualities, the meaning is, let the king, levying it on the heirs, give her a maintenance. VISHNU also propounds the right of the king to the escheat, on failure of descendants from the same company of *Rĭshis* with the deceased; for his expression "on failure of a fellow student" (CCCCXVII) must be taken in a comprehensive sense, from the coincidence of other texts.

It should not be argued, because the ordinances of MENU prevail over all other codes, therefore must the texts of other Sages be reconciled with that which is propounded in his institutes: *and*, for the sake of coincidence with his precept (CCCCXLII), the right of the king mentioned in other texts takes effect only on failure of honest *Bráhmanas*. There is no difficulty in explaining the text of MENU (CCCCXLII) in this sense. VRĬHASPATI pronounces that to be of no authority which contradicts the sense of his ordinances; and it is consistent with just reasoning to infer, that, as that exposition of a law which is most conformable with reason prevails, when two interpretations of it are *found* in competition, so the exposition of a law of MENU, which coincides with the text of another ancient Sage, shall prevail when two interpretations of it are proposed. Consequently, the term "all" in the second text of MENU (CCCCXLIII), and the word "heir" employed by CULLÚCABHATTA in expounding that term 'on failure of the heirs abovementioned,' signify all heirs, including persons sprung from the same company of *Rĭshis*, but not including *Bráhmanas unallied to* the deceased. Authors thus expound the law. Of these two opinions one only should be followed.

If other *Bráhmanas* refuse to take the inheritance, or if there be no *Bráhmanas*, it must in this case be thrown into the water, in like manner as has been ordained by NÁREDA (Book I, v. CCXXXI).

The effects of an infant, and those belonging to a woman, must not be retained by the king, even though they have fallen into his possession (CCCCXLVII): SANC'HA and LIC'HITA themselves cite the authority of a precept, "thus it is expressed," that is, the *Véda* declares: this must be supplied. "The property of a woman;" effects belonging to her; the inheritance of her husband, *which has devolved on her*, and so forth. "The effects of an infant;" property anyhow acquired by a minor, having been given to him by any person whomsoever. Some lawyers say, the last part of the text explains the property of a woman and effects of an infant; and this relates to the king's own wife, sister, and the rest; but of other women, even the inheritance or the like must not be taken by him: this will subsequently become manifest. "The six modes of acquisition;" received before the nuptial fire and so forth.

CCCCXLIX.

MENU:—The king should guard the property which descends to an infant by inheritance, until he return from the house of his preceptor, or until he have passed his minority.

Wealth which descends to an infant by inheritance, and becomes the property of the minor, let the king guard; that is, let him protect it from the *other* heirs. The *Retnácara*.

Consequently the meaning is, let him act in such a manner that other heirs may not take the whole, defrauding the infant, who is incapable from non-age of conducting his own affairs; or the sense may be, let him commit the share of the minor in trust to any one co-heir or other guardian. "Until he return from the house of his preceptor;" this alludes to the three *first* classes, for persons of those tribes are not qualified to conduct their own affairs before they return home. "Or until he have past his minority;" this alludes to the servile class: a young man has past minority when his age is not less than sixteen years, (*that is, when he has completed his fifteenth year.*)

CCCCL.

VISHNU:—The king should guard the property of an infant, and the effects of the husband and wife *in the absence of the husband*.

CCCCLI.

SANC'HA and LIC'HITA:—Let the king protect the effects of infants who are incapable from non-age of conducting their own affairs, and the goods belonging to widows of learned priests and of valiant soldiers; but effects of which there are no owners escheat to the king.

The king must guard the property which devolves on the wives of learned priests and of valiant soldiers, by the absence or departure of the priest and the soldier. Such is the exposition delivered by CHANDÉSWARA.

CCCCLII.

BAUDHÁYANA, treating of the succession of sons:—Their shares, if they be incapable from non-age of conducting their own affairs, let the king keep carefully guarded, together with the accumulation on those shares, until the minors arrive at *years of* discretion.

"With the accumulation;" with the increase. "Carefully guarded;" well protected. "Until;" in the sense of restriction: before they attain their seventeenth year. The *Retnácara*.

Consequently, if the proprietor be dead, and his sons choose to make a partition of his estate, the king being informed by the minor, or by another kinsman, or by his own officer, must himself, or through some person appointed by him, keep the share of the minor until he attain the age of sixteen years: in some instances it should be laid out for increase. In like manner, the expenses and other matters should be superintended by the king himself, or by a person appointed by him. These and other points may be argued from the reason of the law. Again, if the minor have no brother, the whole estate should be nevertheless guarded in a similar manner; for the reason of the law is the same. Thus the property of a woman, and the goods of a minor, falling into the king's power, should not be taken by him as owner: this has been already noticed. But it should be here remarked, that the property of a minor should be entrusted to heirs and the rest *appointed* with his concurrence; or, if the infant be absolutely incapable of discretion, with the consent of a near and unimpeachable friend, such as his mother and the rest. CÁTYÁYANA declares, that kinsmen must guard the property of an infant.

CCCCLIII.

CÁTYÁYANA:—Let all the co-heirs guard the share which belongs to an absent parcener;

2. But if a man die, leaving an infant son, his wealth must be preserved entire by his kinsmen; and they may divide it in due proportions, after the minor has passed adolescence.

If one who has an infant son die, his property must be preserved by the kinsmen or brethren of the minor; it must not be immediately distributed: but they may divide the estate after he has passed adolescence. Such is the meaning of the phrase. Consequently, the share of a minor must be preserved during his adolescence by kinsmen, like the allotment for an absent parcener; for the reason of the law is the same: but before his adolescence partition is not proper. In like manner, the king, or the kinsmen appointed by him, should guard the minor's property received from his brothers as his share of the inheritance. Here kinsmen signify relations in the male line, or, on failure of them, a sister's or daughter's son, or other near kinsman *of the father*. In practice, a mother is guardian of a minor, and of his property: and that is proper, if she be capable *of protecting the ward;* but being a woman, she is under the control of her husband's mother and the rest: still the effects of the widow and of the grandson must be guarded; and since the mother-in-law is a woman, she requires the aid of another kinsman; and he should be selected with the concurrence of the paternal grandmother, and be approved by the king; for the paternal grandmother best knows who among the kinsman is skilled in the conduct of affairs, and the king is an universal superintendent: and if the widow be old and capable of governing her own conduct, there is no harm in permitting the estate to be guarded by a kinsman selected by her; for it is only directed that a widow and the rest shall guard the property by any *possible* means. A contest arising between the mother-in-law and the widow, if the king, residing at a great distance, cannot accurately distinguish their good and bad characters, then indeed any person may be appointed by the king's own selection. This method, established by lawyers on their own judgment, is consistent with the reason of the law.

CCCCLIV.

VRÍHASPATI:—A brother, a brother's son, a *sapinda*, or a pupil, performing rites with a funeral cake *for the deceased*, shall thence obtain increase *of prosperity*.

Consequently, he who takes the estate of the deceased shall perform his obsequies; but if one be heir to the estate, and another be qualified to perform the obsequies, he must give a sufficient sum, and cause the rites to be celebrated by him who is qualified to perform them.

CCCCLV.

SMRÍTI:—He who takes the estate shall perform the obsequies.

The word *śrádd'ha* here signifies the obsequies performed exclusively for a person recently deceased. The *Pracáśa* and *Retnácara*.

But others contend, on the text of VRÍHASPATI above cited (CCCCXXXVII 3), that he who takes the estate of the deceased must also perform the annual *śrádd'ha;* and such is the practice with some persons.

That is wrong; for there is no difficulty in considering the word "annual" as relating to the first anniversary obsequies. Another text does relate to that subject: "He who takes the estate, and fails in performing the *last* duties for the deceased, *is criminal*, &c."

How can the spiritual preceptor, who takes the estate of a *Cshatriya*, perform his funeral rites, since that is forbidden?

CCCCLVI.

The priest who performs funeral rites for persons of an inferior tribe, is degraded to that class in the present world and in the next.

No; for this text relates to brothers unequal in class: and the difficulty is obviated by saying, the spiritual preceptor may accomplish the funeral rites by the intervention of a qualified person equal in class with the deceased.

CCCCLVII.

VISHNU:—He who is heir to the estate is the giver of funeral cakes.

SECT. II.—*On the Inheritance of Anchorites and Devotees.*

The subject of succession to the property of a householder being concluded, YÁJNYAWALCYA propounds succession to property which belonged to a man who had entered into an order of devotion.

CCCCLVIII.

YÁJNYAWALCYA:—The heirs of a hermit, of an anchorite,* and of a student in theology, are, in *inverse* order, the spiritual teacher, the virtuous pupil, and the brother by religious duties being pupil of the same preceptor.

"Being pupil of the same preceptor;" having the same spiritual teacher. He is brother by religious duties, and pupil of the same spiritual father: the apposition is in the form called *carmadháraya*. "In order;" that is, in the inverse order: hence the spiritual preceptor shall take the property of the perpetual student in theology; the virtuous pupil, versed in the study of revelation concerning the supreme soul, and in preserving that sacred science, *shall take* the estate of an anchorite; and the brother by religious duties, being pupil of the same spiritual father, takes the wealth of a hermit. "The brother by religious duties" is one familiarly known as brother of the deceased; the subsequent term (*écat'hrt'hí*) may signify, belonging to the same order of devotion.

If it be alleged, that this contradicts the text of VASISHT'HA (CCCXXXVIII); it may be nevertheless reconciled, by supposing effects anyhow possessed. CHANDÉSWARA.

VACHESPATI MISRA concurs in the same exposition. Another author has stated much, which was obvious, concerning the supposition of effects

* I follow Sir WILLIAM JONES in applying the name of hermit to the *Vánaprast'ha*, and anchorite to the *Yati* or *Sannyási*. See translation of MENU, Chap. VI. T.

anyhow possessed; for example, the hoard of a hermit for the performance of annual rites, and the truss of an anchorite or the like.

But JÍMÚTAVÁHANA considers the last term of the text (*écatírt'hí*) as distinct from the rest. Consequently, the spiritual brother shall take the property of a hermit; the virtuous pupil, the effects of an anchorite; and the spiritual preceptor, the wealth of a student in theology: on failure of them, one who belongs to the same order is heir. The perpetual student in theology is he who, having abandoned his father and the rest, resides for life in the family of his preceptor, remaining strictly obedient to him. But the property of a temporary student in theology shall be taken by his own father and the rest. Such a student in theology, according to the learned, is he who remains near his father and the rest *of his kindred.*

CCCCLIX.

VISHNU:—The spiritual preceptor shall take the property of a deceased hermit.

It should not be argued, from the coincidence of this rule of VISHNU, that the direct order is meant in the preceding text, and that the inverse order need not be supposed: were it so, the consequence would be incongruous, since the spiritual brother would be heir of perpetual students in theology, although their spiritual father were living. Nor should it be argued, that here, as in the case of succession to the estate of him who leaves no son, the order may be such that the person last mentioned is heir on failure of the preceding. The anchorite can have no spiritual father. It must be therefore understood, that the spiritual father is first heir to the wealth of a hermit; on failure of him, the spiritual brother; as in the succession to the estate of a *worldly* man who leaves no male issue. According to JÍMÚTAVÁHANA, the insertion of both terms, spiritual brother, and pupil of the same tutor, or devotee of the same class, is useless; for both senses are conveyed by the single term spiritual brother.

Again; terms are correlative in order then only when they correspond in number; as in the example, "The charms of the lyre, of the wreath of jasmine, of the blue lily, are surpassed by her delightful voice, her smiles, and her enchanting glance:" but here the number is unequal. This objection is answered *by saying*, that, although correlative order be only acknowledged in the instance of terms equal in number, the sense shows that the last, not a preceding term, must be rejected as not included in the correlative order. The sense exhibited by construction is subordinate to the implied purport: as in the example, "CHAITRA is armed with a sword and wears ear-rings, and MAITRA does so likewise;" the wearing of ear-rings is alone suggested by the term "so," because the implied purport points thereto: and thus in other instances.

As for the remark, that as the word pupil, in the instance of the anchorite, signifies him who duly learnt the forms enjoined to that order, so the term spiritual preceptor may signify him who taught those forms: and the spiritual father is therefore first heir of hermits and the rest; after him, the pupil; after him again, the spiritual brother; and, lastly, one belonging to the same order: and such may be the successive right of inheritance. That argument is erroneous; for it is inconsistent with approved usage.

SECT. III.—*On a Second Partition, after Re-union of Parceners.*

In treating of succession to the property of him who has no son, it has been said, a re-united parcener is heir of a re-united one :" now, if two co-heirs who have renewed co-parcenary, make a second partition, how is it regulated? On this point MENU and VISHNU propound a text above cited: "if brethren, once divided, and living again together as parceners, make a "second partition, the shares must in that case be equal; and the first-"born shall have no right of deduction" (CCCCVI 1).

Here "equal shares" suppose the re-union of brothers belonging to the same tribe: but if a *Bráhmana* and a *Cshatriya* become re-united, their allotments must be understood to follow the proportions before mentioned; for this text is merely intended to deny the right of deduction which had been ordained in favour of the first-born. JÍMÚTAVÁHANA.

From the concurrent import of the text of VRĬHASPATI (CCCCVII 1), does it not appear that a second deduction in right of seniority is denied when a second partition is made,* not the original right to a larger portion which had already gained validity? No; for, whether they be father and son, brothers, uncle and nephew, or the like, they possibly may be undivided in respect of wealth acquired by the father, paternal grandfather, or the like: accordingly the first-born cannot have separate property in the *identical* portion formerly received on account of seniority, because a common right to all effects is vested in both re-united parceners by the avoidance of the several rights proclaimed by a former distribution, since JÍMÚTAVÁHANA expresses, 'parceners, having made a partition, and afterwards living together 'in the same house as joint house-keepers, after thus annulling partition, '"what is thy property is mine, what is my property is thine," are said to 'be re-united.' It should not be argued, that the term "annulling partition" only signifies obviating the mediate consequence of the characteristics of partition, not cancelling any several vested rights: were it so, since it is not a maxim that lots will fall on the same chattels *as before*, and since the lots cast may ascertain a right to other goods, while the original right to the former effects is retained, both re-united parceners might have property in almost every chattel after the second partition.

Nor should it be objected, were it so, how could the shares formerly ordained for a *Bráhmana* and a *Cshatriya* remain *in a second distribution*? Since the text concerning partition among brothers of various classes may be applicable to the second as well as to the first distribution, and since it is not contradicted by any other text, it should be so established.* Thus the meaning of the phrase, "their allotments follow the proportions before ordained," is, that the division shall be made in that proportion and mode which were observed in the first instance; for this is no less a partition *than the former distribution was.*

But MISRA thus explains the terms of the text*(CCCCVII 1); although seniority exist, entitling the first-born to a greater portion, still that greater allotment shall not be given: the same legislator propounds an exception in respect of wealth acquired by learning. The commentator's meaning is this: a larger portion again received in right of seniority by birth or the like, under the text of VRĬHASPATI (XLV), because this is also a partition

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* See the various reading of this text in a subsequent page. T.

of property, is forbidden in this second distribution: since the claim of the first-born to the larger portion, formerly received by him, had been already obviated,* the result is the same; the only difference consists in the *commentator's* display of learning. As for the remark, that the same legislator propounds an exception in respect of wealth acquired by learning, that is not restricted to science; for the exception, which shall *now* be mentioned, in respect of a double share, must be considered as relating to acquisition in general. The legislator declares that the acquirer shall have a double share in the present instance, as in the original partition.

CCCCLX.

VRĬHASPATI:—But if one of the re-united brethren acquire wealth by learning or valour, or the like, two shares of it must be given to him *on a second partition*, and the rest shall have each one share.

By learning, or valour, or any other means of acquiring several property.
The *Retnácara*.

Consequently, the law promulged by VYÁSA for the first partition (CX), is extended to the second: the acquirer therefore has a double share, according to the *Retnácara* and the rest, if the wealth were acquired by the simple exertion of learning or the like with supplies from the common estate and so forth; but if it be the acquisition of science technically so denominated by CÁTYÁYANA, the common estate not being used and so forth, the wealth thus acquired is the several property of the acquirer; and if supplies were received from the common estate and so forth, he who is equal or superior in learning has one share, and he who is inferior in knowledge is excluded from participation: if the wealth be acquired by agriculture or the like, without supplies *from the common estate*, it becomes the several property of the acquirer; with supplies, it is shared by all the parceners: this, which has been already explained, must be also understood in the present case.

But, according to JÍMÚTAVÁHANA and others, the acquirer shall have a double allotment, and the rest shall have each one share of wealth anyhow gained with supplies from the joint stock and so forth; if the learning were acquired after a maintenance provided out of the common stock, all the parceners shall have the shares ordained for them, although the joint property were not employed during the acquisition of the wealth; but, even though the common funds of support be not used during the acquisition of science, nor during that of wealth, they who are equal or superior in learning participate: if the money be earned without use of joint property, through agriculture or the like, by *the labour of* a body nourished on the joint funds of support, it *nevertheless* becomes the several property of the acquirer, as before explained.

According to all opinions, the distribution is regulated by the use made of joint property. What is received from a friend, or on account of marriage, or the like, is held as several property: the implied sense of the text of VRĬHASPATI must be considered as extending thus far, according to the circumstances of each case.

* Great obscurity pervades the whole argument. The eldest has no right to a second deduction: nor does he retain, during renewed co-parcenary, his separate property in the identical effects which composed his former allotment in right of seniority; but he receives, on a second partition, the equivalent of his original due. T.

When partition is again made after the period of re-union, what share belongs to him who, being skilled in the means of acquisition, had gained much wealth previously to the former distribution, and who was therefore entitled to two shares at the time of dividing it; and what proportion belongs to him who gained much wealth after the original partition? If it be said, an equal share with the rest; that is inconsistent with common sense: equality of allotment consisting *only* in the prohibition of a greater portion for the first-born, must be therefore established in the text above cited (CCCCVI 1). In like manner, an unequal distribution, after the re-union of brothers of various classes, is legal. A second allotment of a greater share to the first-born is forbidden by the text above cited (CCCCVII 1); the former right to a greater portion is not thereby denied, since it had already gained validity. Even on the reading approved by CHANDÉSWARA, (*punar vibhága carané tésham jyaisht'hyan na vidyaté*, if brothers again make a division of their joint property, the first-born has no right to a larger portion; instead of *tésham vibhága carané punar jyasht'hyan na vidyaté*, if they, *who, after separation, have become re-united through mutual affection*, make a partition, seniority does not again prevail;) the right of the first-born to a larger portion is only denied when a second partition is made.

It should not be argued, that the term "seniority" may here bear a general sense, because there is no authority for restricting its meaning in the present instance; and that the term "again" must signify "but also." The larger portion, already received in right of seniority, cannot now be forbidden: and it is inconsistent with common sense, that he who contributed a greater sum *to the joint stock* when he became re-united, should receive back a less sum when a division is made; and further, the case is similar to that of the acquirer of wealth, as abovementioned. Nor should it be argued, that, a common right to the whole property being vested in both re-united parceners, there is no authority for any subsequent unequal distribution. As wealth gained by partners in trade and adventure trafficing with unequal stock is distributed in proportion to their respective capitals, even though all are equally owners of the wealth thus acquired; so, in this case likewise nothing prevents a similar inference. Accordingly MISRA denies the right of the first-born to a larger portion, on a second partition of joint property, by remarking, 'although seniority exist, entitling the first-born to a greater 'portion, still that greater allotment shall not be given.'

Others say, the larger portion already obtained in right of seniority is not retracted; for the text is intended merely to prohibit the deduction before ordained for the first-born: and the remark of JÍMÚTAVÁHANA is intended merely to forbid that allotment in right of seniority which had been before ordained, that is, enjoined or declared by legislators for the original partition.

VRĬHASPATI defines a re-united parcener (CCCCXXX). According to JÍMÚTAVÁHANA and the rest, re-union can legally take place among them only who are mentioned in the text, namely, father and son, and the rest. According to CHANDÉSWARA and others, re-union may legally take place among all those, including the great-grandson, among whom partition can be made. Some hold that disunited sons and the rest have no claim of succession, if there be re-united sons or the like. In no case is the re-union of female heirs admitted.

If a man, having made a partition with his sons, and again residing with any one of them as a re-united parcener, die after begetting another son, this last-born child shall be sole heir of his estate, by the text of MENU (CI.) "He shall make a partition with the brethren who are re-united;" that is, the re-united brethren shall receive their respective shares, and the son born after partition shall take his father's allotment.* It should not be argued, as the meaning of the term "share," that the son born after partition shall divide *his father's allotment* with his re-united brothers. That would contradict the precept, "a son born after a division shall alone inherit the patrimony." Nor should it be objected, that this contradicts the precept "a re-united parcener is heir of a re-united one:" that relates to the competition of equal claimants. Nor should it be objected, that partition is proper, because the claim of a re-united parcener in right of renewed co-parcenary, and that of a son born after partition in right of posterior birth, are both distinct claims. It is shown by a text formerly cited (C), that sons born before the distribution have no claim on the wealth retained by the father after partition, if a son born after it exist: and it is improper to restrict that text, unless common sense or express law oppose *its comprehensive import;* for re-united parceners have been enriched by their own shares, but the son born after partition has no means of subsistence besides his father's share.

If he who is re-united with another brother possess any undivided property, on whom does the right thereto subsequently devolve? It goes to the re-united parceners only; for a text above cited (CCCCXXVI), shows that brethren who have renewed co-parcenary exclusively inherit the wealth of a re-united brother, and this undivided property belonged to a re-united parcener.

The text of NÁREDA (CCCCXXXIII) is thus read by MISRA: "The vested share of re-united brothers is declared to belong exclusively to them; otherwise it shall go to their *mutual* heirs; or to others, if they leave no issue."† If there be no heir, whose claim is preferable to that of re-united parceners, the succession devolves on them, although there be a disunited claimant as near of kin; otherwise, that is, on failure of re-united parceners, the heritage goes to their *mutual* heirs, namely, to the sons or other descendants of a re-united parcener. Of two co-heirs, who have renewed co-parcenary, if one die childless, after the demise of the other who did leave male issue, the sons of the re-united parcener inherit the estate: such is the meaning. If they leave no issue, that is, no son or other male descendant, it goes to others, namely, to the widow and the rest. Consequently, in such a case, the legal heirs of a re-united parcener shall alone take his inheritance; no others *shall take it,* neither disunited parceners nor their legal heirs. Some lawyers so expound the text.

The vested share of re-united parceners belongs exclusively to them; it appertains exclusively to re-united parceners: mentioned as grounds for showing, that, on failure of them, the succession devolves on others. Or it conveys a precept on the doubt whether all sons may claim partition, because the estate of the deceased was in effect wealth acquired by their father or by his ancestors; and because they are equally *his* sons, *and therefore heirs* by the texts of DÉVALA and the rest (V). Otherwise, that is, on failure of re-

* According to this gloss, the text should be otherwise translated. T.

† The difference of the reading is, *atő'nyat'hánś' a bhájas tu*, instead of *ato'nyathánsas'a bhájah.*

united parceners, *the succession devolves on* their heirs, that is, *on* their sons and the rest. If re-united parceners die, leaving no male issue, it goes to others, that is, to disunited co-heirs. Such is the exposition approved by MISRA. It may also go to any others whomsoever, according to the circumstances of each case, conformably with the rules of decision abovementioned.

MISRA here observes, it is not the meaning of the first hemistich, that the same share which belonged to each at the time when re-union took place, shall be recognized and preserved from him when partition is again made: for, in a community of goods by re-union with half the former wealth, the phrase would bear a spiritual sense, if such were the strict rule.

In the *Párijáta*, the text is read, shares of the wealth of others than these (*atò'nya dhanánśa bhájah*). But that is rejected, as differing from many copies. The *Retnácara*.

As for what is said in the text of CÁTYÁYANA (CCCCXXVII), on the subject of one taking the heritage on failure of the other, the legislator limits the precept, by saying, "if they have no progeny;" the meaning is, because they reciprocally share their estates if they have no offspring. MISRA.

"Leaving no issue" is an expression merely illustrative, comprehending one who leaves no wife or the like. Hence a re-united brother, or other coheir, has no right of inheritance, if he who has no son leave a widow: and thus the doubt is removed, whether all sons shall equally share the estate on the death of their father, who had made a partition with his children, and who was re-united with one of them, because the leaving no issue is stated as a ground of a distinction relative to re-union; for, taking the term in a comprehensive sense, it must necessarily extend to brothers and the rest; else a re-united uncle would inherit the wealth of his re-united nephew, although a brother exist. Therefore, on failure of preferable claimants, those, among equal claimants, who were re-united with the deceased, inherit the wealth of a re-united parcener. Here again, in respect of brothers and the rest, a distinction subsists, founded on texts of law, and relative to the whole and half-blood: thus also it is necessary to take the word "issue," in MISRA's definition, as signifying preferable claimant; for it is said, a disunited son has no claim if there be a re-united one. As for the agrument, that the word "seed" in the text above cited (CCCCXXVII) obviously presenting the sense of offspring, it is consistent with just reasoning to consider the distinction relative to re-union, as implying the failure of offspring, there appears this objection to the argument; since it is a maxim, that, on failure of preferable claimants, those, among equal claimants, who were re-united with the deceased, have a title to inherit, the independent condition "excepting sons and the rest," is troublesome and groundless; for the term "leaving no issue," may bear the sense abovementioned.

CHAP. IX.

ON SUCCESSION TO FEMALES.

SECT. I.—*On the Property of Women.*

CCCCLXI.

NÁREDA:—On the death of the father let sons divide his estate, and let daughters share the wealth of their mother; or, on failure of them, let their issue take it.

"Paternal," or parental in the text of MENU (IV), being derived from a term expressive of both father and mother, (the last being understood,) the estate of the father and that of the mother are meant.

CULLÚCABHATTA.

Consequently daughters and sons succeed to the estate of their mother. Such in effect being the sense, what sort of property left by her shall be taken, and by whom? To distinguish this, the various sorts of separate property held by a mother are discussed. On this subject,

CCCCLXII.

MENU and CÁTYÁYANA:—What was given before the nuptial fire, what was given at the bridal procession, what was given in token of love, and what was received from a mother, a brother, or a father, are considered as the six-fold *separate* property of a *married* woman.

What was bestowed by any person whomsoever, before the nuptial fire, at the time of the marriage: "what was given on the bridal procession;" that is, a present following a bride when she is led to the house of her husband; and what was given in token of love, that is, bestowed by her father-in-law, or other person whose affection is engaged by her good temper, probity, skill, and other good qualities. "Six-fold" is mentioned to except a less, not a greater number; for a present given to a superseded wife, which is another sort of separate property held by a woman, is also mentioned by YÁJNYAWALCYA. The *Retnácara.*

CCCCLXIII.

YÁJNYAWALCYA:—What a father, a mother, a husband, or a brother, has given to a woman, what is presented to her before the nuptial fire, what she receives *to appease and console her* on the second marriage of her lord, are universally considered as her separate property.

When the bride is conveyed from the house of her guardian to the abode of her lord, what is then bestowed by her father-in-law and the rest is a present given on the bridal procession. So the *Méd'hátit'hi*. This should be also comprehended *in the enumeration of separate property;* for the reasoning is equally applicable. The *Retnácara.*

CÁTYÁYANA explains the present given before the nuptial fire :

CCCCLXIV.

CÁTYÁYANA :—Whatever is given to women at the time of their marriage before the sacred fire, *which is the witness of nuptials*, is denominated by Sages their property "given before the nuptial fire."

"Whatever is given:" here the person who makes *the gift* is not her father, or other relation; for, were such the meaning, it would simply intend "what was received from a mother, a brother, or a father." Therefore it means only what is given by any person whomsoever, whether he be or be not allied by blood. Accordingly it is said by the author of the *Retnácara*, 'given by any person whomsoever at the time of her marriage.' What friends also give at the time of a girl's nuptials, in token of respect to the damsel, is her *separate* property. As the practice subsists in this country for the friends of the bridegroom to give the woman some trifle in token of respect, so it appears that a practice subsists in some countries for the friends of the bride's father to give the damsel some trifle.

The same legislator explains a present given on the bridal procession :

CCCCLXV.

CÁTYÁYANA :—What a woman receives from the family of her parents, while she is led to the house of her husband, is called the property of a woman "given at her procession."

What is given by any person whomsoever in honour of a bride going from the house of her father to the mansion of her husband, is a present given at her procession. Accordingly the author of the *Retnácara* has said, 'a present following a bride.' What is given on account of a bride going in procession is given at her back ; for she goes before, and properly the gift follows her. Such is the popular language.

Does her procession to the house of her husband consist in going thither at the time of the nuptial ceremony, or at that of the *final* procession of both *bride and bridegroom to the husband's house*, or at any other time ? On this point nothing has been said by the author of the *Retnácara*. But MISRA affirms, 'at the time of the final procession of both *bride and bridegroom to the husband's house*.' On the other hand, JÍMÚTAVÁHANA, not finding that presents are given by friends to a bride, while she is led from the house of her father to the abode of her husband, interprets the text otherwise ; 'what a woman receives from the family of her father or mother, while she is led to the house of her lord.' It must be considered, that the same sense being deduced from the phrase, "what was received from a brother, or a mother, or a father," the separate mention of a present given on the bridal procession would be fruitless.

What was given *in token of affection* by her father-in-law and the rest. Such is the interpretation of "given," according to the *Retnácara*. MISRA

remarks on the three sorts of property bestowed by a mother and the rest, that the meaning is obvious. The agent in the phrase, "given in token of love," may be the family of her husband; "what was given to a woman by his family:" it may therefore comprehend what is received by a woman on the second marriage of her lord. "Mother" is a term illustrative of the family of her mother, and so is father illustrative of his family. "Brother" is again mentioned to denote his pre-eminence by the same rule by which two names of kine are at once used in a general and particular sense.

Thus, since there is no separate property of women different from those six sorts, it may be objected to the opinion delivered in the *Retnácara*, that it was useless to say, '*the enumeration is intended* to except a less number.' By parity of reasoning, the same objection may be also made to what has been said by Misra and others, "it is intended to except a less number."

CCCCLXVI.

Cátyáyana:—Anything which is given to a woman by the mother or father of her husband in token of affection, and that which is given in return of her humble salutations, is called wealth gained by loveliness.

"Loveliness," consists in good temper, skill *in feminine arts*, and the like. *A present in token of affection*, and what is given by the father or mother of her husband, to a woman endowed with good temper and other amiable qualities, and who humbly salutes their feet, constitute the third sort of exclusive property. Misra.

Since a present given through affection is separately mentioned by Cátyáyana, does it not follow that a present given by her husband is not the same with one bestowed through affection? No; for her husband and others may also be included in the text, since the particle "or" is used indeterminately in the expression "by the mother or father of her husband:" and there is no difficulty in considering the last hemistich of the verse as a separate phrase; for the sense of the text is this, what is given by the mother of her husband, and by *certain* other persons, is bestowed through affection, and what is obtained by lowly salutations is acquired by loveliness. The whole cannot be taken as a single phrase, bearing this sense, 'what is given by the mother of her husband, and by *certain* other persons, is a return for humble salutations, and that alone is called the acquisition of loveliness;' for one of the relatives would be unmeaning. It should not be objected, that a present given in token of affection alone constitutes the third sort of *exclusive* wealth; and that a gift to a superseded wife is not a present given in token of affection, because it is received by the woman when disposed to wrath and the like by reason of the second marriage of her lord. Still the present cannot be given without tenderness, for her husband is moved to affection by her assent to his second marriage; and the difficulty is removed, by considering the term "in token of affection" as merely illustrative.

Yájnyawalcya explains a present given to a woman on the second marriage of her lord (LXXXVII). She, above whom a marriage is contracted, is a superseded wife (*adhibinná*). So the *Retnácara*. *Adhi* is therefore used in the sense of above; and *bédana*, in the sense of taking a bride, according to the literal meaning of the verb *bidri*, take. Consequently the second marriage of her husband is supersession of a wife; and a present

received on the second marriage *of her lord* shall be so much only as is promised *to console her* for the supersession. "But if *such* wealth, *as is usually given to women*, had been delivered to her, she is held entitled only to a moiety or part;" that is, the sum promised shall be completed by wealth previously and subsequently bestowed. If a larger sum had already been given, some trifle must be delivered to fulfil the promise of a present.

So much only as is given to the wife who is now espoused, must be given to the wife who is superseded. SRÍ CRÏSHNA TERCÁLANCÁRA.

The word "equal" signifies so much only as is expended on the second marriage. VIJNYÁNÉSWARA.

In the second* of these three expositions there is *this* defect: not she, but another woman, is the person to whom the sum promised is given; and it would not be a present on supersession by the second marriage of her lord, since supersession is not the cause of giving that sum: neither is the second marriage the *immediate* cause of giving a present to the first wife. When the second nuptials have taken place, and nothing has been expended on them, since nothing would in that case be given according to this (*third*) opinion, the second marriage, jointly with the expense of it, is not the *immediate* cause *of giving a present to the woman*: her being the first wife is the sole cause. Thus there is no certainty in these two interpretations. It cannot be a positive precept, that the term "equal," though parity be always requisite, shall refer only to the amount expended or the like. Again; if that which is given to a second wife endowed with pre-eminent qualities must also be given to the first wife, this would contradict common sense. A rule of practice should be formed on due consideration *of these difficulties*.

CCCCLXVII.

VISHNU:—The property of a female is that which her father, mother, friend, or brother has given her; what she received in the presence of the nuptial fire; *on the bridal procession;* or when her husband took a second wife; what her husband agrees to be her perquisite; and what is received from his or her kinsman as a gift subsequent to the marriage.

It should not be argued, because more than six sorts of property are mentioned in this rule of VISHNU, that the text of MENU must necessarily be considered as an exception of the less number. Friends and the rest are comprehended in "the family of her father." "Received" (*upágata*) may signify what is bestowed on account of her coming, that is, a present given on the bridal procession. The present received when her husband took a second wife, must be reconciled, in the mode abovementioned, *with one of the other sorts enumerated*. Her perquisite, and a gift subsequent, are in effect given by her husband and the rest.

CCCCLXVIII.

CÁTYÁYANA:—What is received by a woman after marriage from the kinsmen of her lord, or from those of her parents, is called "a gift subsequent:"

* The manuscript has "first;" but the objection is only applicable to the second. T.

2. But BHRĬGU gives the name of "subsequent gift" to anything received by her after the nuptial ceremony, from her husband himself, or from her parents, through pure affection.

3. The trifle which is received by a woman as the price *or reward* of household *labour*, of *using household* utensils, of *keeping* beasts of burden, of *watching* milch cattle, of *preserving* ornaments of dress, or of *superintending* servants, is called her "perquisite."

Consequently, what is received after marriage from the family of her husband, mother, or father, and what is received from her husband himself, from her mother, or from her father, is a gift subsequent. Such is the explanation approved by JÍMÚTAVÁHANA. To include a present given before marriage *in the enumeration of several property*, what was given by the mother, father, or brother, has been already mentioned. It should not be objected, that still the word "son" in the rule of VISHNU, as read by MISRA, ("that which her father, mother, son, or brother, has given her,") is unmeaning. That word may signify son by another wife of her husband.

JÍMÚTAVÁHANA reads the text of CÁTYÁYANA (CCCCLVIII 1) "and so received from the family of her kinsman."* He adds this gloss: the word "kinsman" intends maternal uncles and others; for her father and the rest would be suggested by the term "her own *family*." On the other reading, which is followed in the *Retnácara* and other works, "what is received by her from her own family,"† the expression "her own family" must signify that from which she sprung, namely, the family of her father and mother. Hence, say some lawyers, the word "son" is pertinent.

"The trifle which is received, &c." (CCCCLXVIII 3); what is obtained by a woman from the master of the family, as a reward for doing the business of the house, and making household utensils and the like, is her perquisite. So MISRA. The meaning is, what the master of the house, pleased with the performance of the household business, gives *to a woman*, is her perquisite.

As for what has been ordained by VYÁSA (Book II, Ch. IV, v. XXIX,) which is thus expounded by JÍMÚTAVÁHANA: 'a gift to the bridegroom, 'with a declaration of its use in this form, "let this belong to the bride," 'but not a gift made without such *declaration of the* purpose, *shall be her* '*entire property*; accordingly, "at the time of her nuptials" is mentioned 'merely by way of illustration: it is not an indispensable condition; for 'the declared intention of the giver is the cause of property *vesting in her*:' and as for the authentic text on the same subject, which is cited by JÍMÚTAVÁHANA, and in which the term "at the time of her nuptials" is omitted (Book II, Ch. IV, v. XXX): these precepts do not show the independence of a woman who possesses wealth denominated the property of a female; for the bridegroom is mentioned as the person who received the gift ("what shall be given to the bridegroom"): and the second text shows, that during her life a woman enjoys such wealth in concert with her husband, forbids the alienation of it without her own *express* sanction, and reserves it for herself when partition is made *among her sons* in their father's lifetime; and that after her death her sons shall alone obtain that wealth, on a partition made during the life of their father, or on a distribution among brothers

* Labdham bandhu culát tathá. † Yal labdham swa culát tayá.

after his demise: or else, upon the reasoning delivered under the title of Subtraction of Gift, if the sole property of the wife be acknowledged, and her independent power over it *be* also *admitted* on the suggestion of JÍMÚTAVÁHANA, then likewise that wealth is incontestably wealth given by her father. But ŚÚLAPANI, CULLÚCABHATTA, and the rest, admit, that the presents received before the nuptial fire, or on the bridal procession, may have been given by her father and the rest. Here, since it is improper to bar the comprehension of strangers in the term "and the rest," presents received before the nuptial fire, or on the bridal procession, are distinct from those which are given by her father and other relatives; consequently the separate property of married women is incontestably six-fold. What was received from a father, and what was obtained from a mother, are therefore two sorts of separate property; what was given by a brother or by a kinsman is one sort; *these* and what was obtained from the family of her husband, a present accepted before the sacrificial fire, and one received on the bridal procession, are six sorts of separate property held by women.

JÍMÚTAVÁHANA explains "given by a kinsman," bestowed by a maternal uncle or the like. ŚÚLAPÁNI expounds it, given by a kinsman of her mother, or by relation of her father. Only six sorts of separate property held by women are *yet* seen, how *then is it said* this *is* an exception of a less number?

NÁREDA also propounds six sorts of separate property held by women:

CCCCLXIX.

NÁREDA:—Gifts to a woman at the nuptial fire, at her procession, by her husband, her brother, her father, or her mother, constitute her six-fold property.

A gift by her husband includes the present given in token of love, as propounded by MENU. Again: husband, and other terms expressive of connexion or relation, signify also their families; but the word "brother" denotes kinsman, as in a former instance; or it literally signifies "brother," *the consequent repetition being justified* by the same rule by which two names of kine are at once used in a general and particular sense.

CCCCLXX.

CÁTYÁYANA:—But whatever wealth she may gain by arts, *as by painting or spinning*, or may receive on account of friendship from any but the kindred of her husband or parents, her lord alone has dominion over it: of her other property she may dispose *without first obtaining his assent.*

"Arts" in this text is expressed in the plural number, with the sense of "and the rest." Consequently her husband has independent power over all other wealth except the six-fold property of a woman. What then is the rule in respect of an estate devolving on her, from her father, or other relative, *on failure of male heirs?* It should not be answered, she is subject to the control of her husband, even in respect of this estate, because it is not included in the six-fold property of women. Since the eventual heir of her father and the rest is, at a subsequent time, sole heir of wealth which had

devolved on her from her ancestors, it contradicts common sense that this should be subject to the control of her husband. To the question thus proposed the answer is, it is subject to his control so long only as it remains in the possession of his wife; afterwards, it shall be received by the legal heir of her father and the rest.

On the opinion of those who acknowledge the ownership of her husband in wealth acquired by his wife, not simple control over it, how can the legal heirs of her father succeed on the death of the wife, since her husband's title is not devested so long as he lives? In truth, JÍMÚTAVÁHANA alone contends for the succession of her father's heirs, after the death of the daughter, to the patrimony which devolved on her *by the failure of male issue;* and he does not acknowledge the property of the husband in the wealth of his wife: but those who do not acknowledge the husband's claim, must not admit the succession of her father's heirs to the patrimony which has devolved on the daughter; for no text nor reasoning shows it. As for the argument, that, since this occurs in the succession of a wife who is the first entitled to the estate of one who leaves no male issue by males, the same should be also established in other cases, when a daughter or the like has succeeded; that argument would be also intruded in other remote cases, *such as the* succession of a daughter's son, or of a brother: and that is not founded on positive ordinances, but established by authors on the sole suggestion of their own understandings; it is not even noticed by CHANDÉSWARA and the rest. On the opinion of those who maintain the property of both *husband and wife* in her wealth, there is no difficulty whatsoever; for, it may be established that the husband's title is lost on the devesture of his wife's.

"From any other" (CCCCLXX): in that which is received from any but the kindred of her father, mother, or husband, and in that which is acquired by arts, her husband has ownership, and has independent power over it, that is, he may with propriety seize it, even though suffering no distress. Hence, though it belong to the woman, it is not her separate property *in contemplation of law,* for she is not independent. It is a remark of JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, that a wife has property, subject to the control of her husband, in wealth devolving on her *from her own family.* That it becomes the property of her husband, is stated as the opinion of ancient authors. But some lawyers argue, that the estate of her father, devolving on his daughter *by the failure of male issue,* becomes her separate property; for the patrimony which devolves on a daughter *by the failure of male issue* is not mentioned in the text above cited (CCCCLXX); and a subsequent precept of CÁTYÁYANA (CCCCLXXV) states simply "what a woman receives:" and this they hold to be the meaning of JÍMÚTAVÁHANA himself.

That *last inference* we do not admit; for it is nowhere seen, that a woman has independent power over anything which is not given to her: the expression "of her other property she may dispose" (CCCCLXX), declaring that only to be the *separate* property of a woman over which her husband has not independent power, it is *a* just *inference,* that he has such power over that only which is different from the six-fold property *of women,* as propounded by MENU and the rest. But if it be affirmed as the opinion of JÍMÚTAVÁHANA, that "this is a third kind of property;" (thus wealth over which a woman has independent power, and which is called her separate property, is the first kind; that which was acquired by arts or the like, and which is subject to the control of her husband, is the second kind; the

wealth which has devolved on her *from her ancestors* is the third sort, and both *husband and wife* have independent power over it:) that could only be admitted, *as the opinion of* JÍMÚTAVÁHANA, if it were confirmed by reasoning; but it contradicts common sense. It has been thus remarked in books, that the observation of authors, 'the enumeration is only intended to except a less number,' is thus contradicted; for *all* sorts of *exclusive* property held by women fall within the six denominations which have been mentioned. The observation, that the intention is to except a less number, is not pertinent; for the six sorts of property are described by their respective names. Nor is it to the purpose that the same CÁTYÁYANA, who declares the property of women to be six-fold, exhibits a greater number; for his meaning is, that everything which is received by a woman, before or after marriage, from her father, or from his relations, or from the family of her husband, is her property given by affectionate kindred. The object of this *remark* is the food, vesture, and the like, which will be declared *to be the exclusive property of a woman.*

Some lawyers hold, that the number specified is affirmed to be an exception of a less one, because the perquisites mentioned in the text of DÉVALA (CCCCLXXVIII), and in a precept of VISHNU above cited (CCCCLXVII), constitute an additional sort *of exclusive property;* for example, according to the interpretation of JÍMÚTAVÁHANA, what is given as a bribe to a woman, by householders, by artisans, or by others, to send her husband and the rest to perform work required by them, is her perquisite; it is the price *or reward* of labour, because the purpose is to entertain *a labourer.* The exposition delivered in the *Retnácara* is similar; but the interpretation of MISRA should be followed. Consequently, this wealth, being given by others than the kinsmen of her father and rest, does not fall within the six-fold property *of women.* It should not be answered, this is only intended by the text, "whatever she may receive, on account of friendship, from any but the kindred of her husband and parents". (CCCCLXX). That phrase is only applicable to a different case.

To the argument of these lawyers the answer is: if perquisite, which is an abscure term, can by any interpretation be included in the six sorts of property, why should the texts of Sages be otherwise expounded, by affirming an unusual sort *of property* exceeding that enumeration? for what a kinsman, being much pleased with her management of household affairs, bestows on a woman, is her perquisite; as that which is given in return for humble salutation is her property gained by loveliness: these and other acquisitions may be considered as distinct sorts of wealth given by her husband's father and the rest.

The sense of the text (CCCCLXX) is this: what is received by a woman on account of work in household affairs and so forth, is the price of her labour, as it were her wages (for such is the subject of the text); what is *so* given to a woman is called her exclusive property, under the name of perquisite. Here, "house," is obvious; "household utensils," are brooms and similar things; "beasts of burden," are oxen and the like; "milch cattle," are cows and the rest; "ornaments of dress," are things worn for decoration; workmen are slaves *or servants:* the meaning in effect is, what is given through satisfaction at her skill in sweeping *with brooms,* in keeping and watching cattle and the rest, in commanding the slaves and so forth, or what is given as a bribe to undertake these several employments. But VYÁSA otherwise defines a perquisite (*sulca).* JÍMÚTAVÁHANA.

CCCCLXXI.

VYÁSA :—That which is given to bring *the bride* to the family of her husband is her perquisite; which is given as a bribe or the like, that she may cheerfully go to the mansion of her lord.

We hold that authors have otherwise expounded the texts of legislators, considering that also as the exclusive property of women which is given to wives and others as a bribe to send *their husbands and the rest* to perform work, such as thatching a house and the like; or *they have delivered such an exposition*, admitting some difference in the gifts subsequent *to marriage*, which have been specially defined. The difference in the two interpretations should be examined; no argument is found *to show* why a woman should not have independent power over that which she has gained by arts, or which has been given to her by a stranger on a religious consideration, or through friendship, but should have independent power over *that which was received as* a bribe.

"Food and vesture;" what is given for her support: this coincides with a subsequent text (CCCCLXXV 2). "Ornaments;" ornamental apparel. "Perquisites;" what is given to a damsel on asking her in marriage. "Wealth received;" that which is obtained from a kinsman. All this is the exclusive property of a woman. MISRA and CHANDÉSWARA.

The perquisites, which have been already explained, may be also understood *to be meant*.

CCCCLXXII.

ÁPASTAMBA :—Ornaments are the exclusive property of a wife, and so is wealth given to her by kinsmen or friends, according to some *legislators*.

The meaning is, 'wealth given to her by friends is the exclusive property of the wife.' "According to some legislators;" this is mentioned to show a regulated alternative: what is given by kinsmen on the marriage of their relative, at the time of the nuptial ceremony or the like, is the exclusive property of a woman; but her lord has dominion over that which is presented at any other time. Accordingly, CHANDÉSWARA remarks on the phrase, "and so is wealth given to her by kinsmen or friends, according to some legislators," that wealth received at the nuptial ceremony, which is called a present given on account of marriage, is also the exclusive property of a wife.

CCCCLXXIII.

MENU and VISHNU, on the subject of ornaments;—Such ornamental apparel as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves; they who divide it among themselves fall deep *into sin*.

That ornamental apparel which is worn by women during the lives of their husbands, with their assent, the sons and the rest shall not divide when partition is made after the death of those husbands; they who divide it become sinners. CULLÚCABHATTA.

In so much only is that ornamental apparel the exclusive property of a wife. So the *Mitácshará*, the author of the *Pracása*, CHANDÉSWARA, VÁCHESPATI MISRA, RAGHUNANDANA, and others.

The assent of her lord is indispensably necessary; and it is also requisite that this apparel should have been the several property of her husband, as declared by MENU.

CCCCLXXIV.

MENU:—A woman should never make a hoard from the goods of the kindred *which are* common *to her and* many; or even from the property of her lord, without his assent.

Wives and other women should never make a hoard for their own ornamental apparel and the like, out of the wealth of the family, *which is* common to many, *namely*, to brothers and the rest; nor should a hoard be made, even from the property of her husband, without his acquiescence: hence this does not become the exclusive property of the woman.

CULLÚCABHATTA.

By saying "women should never make a hoard," it is forbidden to take such goods; but it is not suggested, that, if the chattels be taken, the object is unattained: why then is it said, 'this does not become the exclusive property of a woman?' The answer is, since a right cannot be gained, if she take the effects without the assent of the owner, this does not become her exclusive property: but if none afterwards molest the woman who has so taken the goods, a title is gained by occupancy; for the maxim expresses, "what is not forbidden is permitted." Else the enunciation of the text would be superfluous, since gift could only take place by express assent in these words, 'be this thine.' Or the sense of the text may be this; a title is only gained by assent thus expressed, "wear this apparel." It should not be objected, how can it become her property since she has not acquired it? Habitual wear is considered as a mode of acquisition under the authority of the text. When another does not oppose the use of that apparel, the *tacit* permission of wearing it exists; else why is it not resisted? But if he do not oppose it, fearing to arouse anger, or to cause a breach of friendship, then indeed it does not become the property of the woman, notwithstanding such silent assent.

But CHANDÉSWARA, referring the word goods to the proximate term family or kindred, says, women should not make a hoard, or deliberately take wealth out of goods common to many, without the assent of the owners; nor even take it from the property of her husband, which is not common to him and another family, without the assent of the owner. It follows, that, if she take it from property belonging to a numerous family, by consent of all the owners, it legally becomes her exclusive property: but that is not deduced from the literal sense of the text, and is therefore unacknowledged by CULLÚCABHATTA. It should not be argued, this is suggested by the precept, "the heirs of those husbands shall not divide it among themselves;" because otherwise it could not be supposed that apparel, being the sole property of her lord, might be divided by other heirs, and the prohibition would therefore be unmeaning. Heirs may here signify sons; it is consequently ordained, that sons should acknowledge ornamental apparel worn *by the woman*, with the assent of her lord, to be the exclusive property of their mother. It is declared by MENU and VISHNU (CCCLXIII), that ornaments worn by mutual consent are indivisible. From the concurrent import of these texts, CHANDÉSWARA has affirmed this. Consequently, those ornaments which are worn by the wives of co-heirs, with their mutual consent, become the exclusive property of those women.

If one brother have conceded ornamental apparel to the wife of another, and afterwards that other brother, *namely*, the husband of the woman who is already provided with such apparel, refuse to concede ornaments to the wife of that *first* brother, what shall be the consequence? The ornaments already worn by one have legally become indivisible property, under the authority of the text (CCCLXII): the king, however, shall compel the concession of suitable ornaments to the wife of the *first* brother; or else, when partition is finally made, a sufficient sum must be first set apart to provide such ornaments, and they may then proceed to partition: but if they be destitute of wealth when a separation takes place, another rule must be followed.

Such is the nature of exclusive property held by women: they, not their husbands and the rest, have independent power over it, as owners of that property. The following texts declare it:—

CCCCLXXV.

CÁTYÁYANA:—What a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord or her parents, is called a gift from affectionate kindred;

2. And such a gift having by them been presented through kindness, that the women possessing it may live well, is declared by law to be their absolute property:

3. The absolute exclusive dominion of women over such a gift is perpetually celebrated; and they have power to sell or give it away as they please, even though it consist of lands and houses.

4. Neither the husband, nor the son, nor the father, nor the brother, have power to use or to aliene the legal property of a woman:

5. And if any of them shall consume such property against her own consent, he shall be compelled to pay its *value with* interest to her, and shall also pay a fine *to the king;*

6. But if he consume it with her assent, after an amicable transaction, he shall pay the principal only, when he has wealth *enough* to restore it.*

7. Whatever she has put amicably into the hands of her husband afflicted by disease, suffering distress, or sorely pressed by creditors, he should repay that by his own free will.

"In the mansion of her husband:" the words are so connected. "From her brother† or her parents:" this is merely illustrative. Hence, what is received by a woman, either after marriage or before it, in the mansion of her husband or in the house of her father, from her mother, from her father, or from other *persons*, is *called* a gift from affectionate kindred. CHANDÉSWARA.

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* Book I, v. LXXIII.

† In a former citation the text was read "husband" (*bhartuh*, not *bhrátuh*). T.

MISRA delivers a similar exposition; but, instead of saying "from other persons," he says, from her own kindred, or from the relations of her lord. There is this difference:

That which is received from affectionate kindred (*sudáya*), is the gift of affectionate kindred (*saudáyica*). JÍMÚTAVÁHANA.

That which is received from an affectionate father, mother, or husband, or from the kindred of these, is a gift from affectionate kindred. "Through kindness;" through tenderness. RAGHUNANDANA.

Such a gift is declared by law to be the absolute property of a woman. She may therefore consume it without the assent of her husband or guardian. As for the remark, that the absolute exclusive dominion of women over such property is an explanatory precept, whence it follows, that their husbands have not absolute dominion over that property, and that the legislator himself so explains his meaning (CCCCLXXV 4): the remark is erroneous; for it would contradict the design to propound an explanatory precept, without first delivering a text suggesting the absolute dominion of women over such property. That a precept is explanatory, is deduced from the priority of another ordinance.

The legislator next declares, that a woman may sell or give away her own separate property, without the assent of any other person (CCCCLXXV 3); "even though it consist of lands and houses." A woman has absolute exclusive dominion over such gifts, consisting of lands and houses, except such immovables as her husband gave her.

The *Retnácara*.

NÁREDA propounds this exception of such immovables as her husband gave her:

CCCCLXXVI.

NÁREDA:—Property given to her by her husband through pure affection, she may enjoy at her pleasure after his death, or may give it away, except land or houses.

But some lawyers, considering the two subjoined texts of CÁTYÁYANA as relating to the separate property of women, because they are placed under that title, affirm that the precepts must be thus expounded: wealth given by her husband, even though it consist of gems and the like, she must not, while he lives, give to any person, nor entrust it to another; by the authority of the text: but immovable property she must not give to any person whomsoever, even after the death of her husband.

CCCCLXXVII.

CÁTYÁYANA:—What a woman has received as a gift from her husband, she may dispose of at pleasure after his death, *if it be movable;* but, as long as he lives, let her preserve it with frugality: or she may commit it to his family.

2. The childless widow, preserving inviolate the bed of her lord, and strictly obedient to her spiritual parents, may frugally enjoy *the estate* until she die; after her, the legal heirs shall take it.

"The childless widow;" considering that the several property of a woman may be resumed, if she do not preserve unsullied the bed of her lord (CCCCV 2), the legislator propounds this text. This maxim being true in respect of the several property over which a woman has exclusive dominion, the same is equitable in respect of an estate devolving on her by the failure of male issue. Or this text may not solely relate to the peculiar property of a woman, but to any effects which she holds as such: thus, according to CHANDÉSWARA and the rest, there exists a coincidence with the last text; but, according to JÍMÚTAVÁHANA, with both. These lawyers so expound the law.

The author of the *Pracáśa* announces the opinion of CHANDÉSWARA. HELÁYUDHA and the *Párijáta* say, both those texts relate to the peculiar property of a woman, because they are placed under that title. Gems and the like given by her husband, must not be aliened whilst he lives; those which belonged to him, but devolve on her by failure of male issue, and both sorts of immovables which had belonged to her husband, must never be aliened by a woman: such is the opinion of JÍMÚTAVÁHANA. Gems and the like given by her husband, or which have devolved on her from him in default of male issue, a woman may give away at pleasure: both sorts of immovable property which had belonged to her husband she must not give away, but she may enjoy it under the text which declares property common to the married pair; all effects belonging to her husband, which she has received, she must preserve with frugality as long as he lives: such is the opinion of CHANDÉSWARA and the rest. These opinions should be reviewed by the wise.

What is acquired by the wife during the state of deprivation of her husband, is also her peculiar property. How can it be so, since it is exclusive of the six sorts? *The answer is,* authors do not acknowledge the restrictive enumeration of six kinds; and even though it were admitted, the difficulty would be removed by affirming, *that* this maxim *is true* of a woman who is herself sole mistress *of the wealth acquired.* Who has a right to that which is acquired by a woman before marriage? A daughter may be also comprehended in a text formerly cited (Book III, Chap. I, v. LII 1), because the masculine gender is not there used in a determinate sense, or because the particle "and" connects the terms with that which is unexpressed; or, lastly, because the term "*son*" is illustrative *of a general meaning:* her father has therefore property in the wealth acquired by her, as he has a claim to the son produced by her before marriage. Such is the method founded on the opinion of ancient authors. It should be thoroughly examined by the wise.

But, according to JÍMÚTAVÁHANA, all wealth acquired by a woman is held by her as her exclusive property; as that which is gained by a married woman is subject to the control of her lord, so is wealth acquired by an unmarried woman subject to the control of her father, because she also belongs to her sire; hence, though *subsequently* married, she alone can enjoy or aliene such wealth, with the assent of her father. But, after the death of her husband, no person has dominion over a widow; her spiritual parent, that is, her father-in-law, or other guardian, merely support her: hence she has absolute power over that which she then acquires. This should be held demonstrated.

The legislator declares, that her husband has no power to use or aliene the legal property of a woman (CCCCLXXV 4). On this subject DÉVALA propounds a special rule:

CCCCLXXVIII.

DÉVALA :—Food and vesture, ornaments, perquisites, and wealth received by a woman *from a kinsman*, are her own property: she may enjoy it herself; and her husband has no right to it, except in extreme distress:

2. If he give it away on a false consideration, or consume it, he must repay the value to the woman, with interest; but he may use the property of his wife, to relieve a distressed son.

"Food and vesture;" funds appropriated to her support. "Ornaments;" ornamental apparel. "Gain, or wealth received;" that which is obtained from kinsmen. "Perquisites," wealth given to a damsel on asking her in marriage. The *Retnácara* and *Chintámeni*.

Both sorts of perquisites mentioned by CÁTYÁYANA, and other kinds *of exclusive property held by women*, must also be comprehended in the text: this *sort* is mentioned by both commentators, to show that this also is her perquisite; other kinds of female property must be comprehended in the text, considering the terms of it as illustrative of a general meaning.

When a husband, taking the property of his wife under pretence of some indispensable duty or the like, gives it away on immoral considerations, or consumes it, he must repay the value with interest: but the property of a woman may be taken without her assent, to relieve a distressed son. The *Retnácara*.

Consequently, interest must be paid on the property of a woman, which is taken, after an amicable transaction, for the purpose of giving it away on immoral considerations: without the consent of women, their property must not be aliened on such considerations, nor consumed; but that may be done to relieve a son. The *Chintámeni*.

"He may consume it:" hence it is deduced, that, although it bear no interest, it need not be repaid. The subjoined text makes this evident:

CCCCLXXIX.

YÁJNYAWALCYA :—If a husband, in a famine, or for the performance of some indispensable duty, or during extreme illness, or while a creditor keeps him confined, should appropriate the wealth of his wife, he shall not, *while his distress lasts*, be compelled to restore it against his will.

For some duty which must indispensably be performed. The wealth of his wife taken to obtain relief in extreme illness, which prevents the performance of a duty, need not be repaid to her. The *Retnácara*.

"Preventing" is an epithet of illness: the meaning is, precluding the performance of a duty. Consequently, the separate wealth of his wife, taken by the husband to accomplish the performance of an indispensable duty, which cannot otherwise be fulfilled, need not be repaid against his will. The *Vivāda Chintámeni*.

Some lawyers add, what is taken in the distress of a son, even though it be not such as to prevent *the performance of duties*, the husband need not restore against his will; for the epithet "preventing" does not occur in the

text of DÉVALA: that only which is taken to obtain relief from such disease, afflicting any other than a son, which does impede *the performance of duties*, need not be repaid.

In the *Dípacalicá* the term is explained, while a creditor keeps him confined, preventing his eating and so forth. It is supposed in the *Dípacalicá*, that extreme illness is here denoted by the word disease. Considering this phrase as illustrative of a general meaning, CHANDÉSWARA holds, that confinement by a creditor is comprehended *in the text:* consequently, the purport of both commentaries is the same. In fact, whenever the performance of duties is impeded, a husband need not restore the wealth of his wife then taken on failure of other means of relief. Since the word "husband" is here exhibited, this rule relates to him alone, and to no other person. This should be held demonstrated. JÍMÚTAVÁHANA further observes, a husband, unable to subsist in a famine or the like without using the property of his wife, may then, but at no other time, appropriate her wealth.

"And if any of them shall consume such property, &c." (CCCCLXXV 5); any one of them, her husband, her son, or any of the rest: their punishment should, according to circumstances, consist in harsh reproof or the like. But MENU directs that others shall suffer the punishment of a thief.

CCCCLXXX.

MENU:—Whether barren, or deprived of their sons, or destitute of kindred, the care of faithful wives must be the same, and of women whose husbands are absent, or who suffer distress:

2. On those men, whether kinsmen or others, who seize the property of such women while they live, a virtuous king must inflict the punishment of a robber.

"Barren;" sterile: consequently, barren women; those who have lost their sons, and have no kinsmen on the father's, mother's, or husband's side: and married women, who are faithful to their lords, must be so protected; that is, must be cherished like infants: and so must women whose husbands are absent, or who have been forsaken by them without just cause. On those men who seize their property by force or fraud while they live, a virtuous king must inflict the punishment of a robber. Such is the exposition approved by CULLÚCABHATTA. "Kinsmen" is an expression merely illustrative, which must be extended to others also.

"But, if he consume it with her assent, he shall pay the principal only, when he has wealth enough to restore it" (CCCCLXXV 6): there is consequently no harm if he do not repay the loan while he remains indigent. Accordingly, a text denying interest on the property of a woman has been cited in the book on Loans and Payment (Book I, v. LXXII): and this return of the principal only must be understood in a case different from the relief of a distressed son, and in the instance of a gift on immoral considerations with *the* assent *of the woman*. By thus directing the restoration of such wealth with interest *in certain cases*, the supposition that the husband has a title in the sole property of his wife, as she has in the sole property of her husband, but that she has a further independent power over that which is called her exclusive wealth, is thus contradicted, by directing the restoration of her property with interest *in certain cases;* for wealth which also belonged to her own lord, could not become a loan *to him*.

"Whatever she has put amicably into the hands of her husband, afflicted by disease, suffering distress or calamity, &c." (CCCCLXXV 7): consequently, as his wife, seeing his distress, *voluntarily* gave her own property, so should her husband also repay it of his own accord, without a demand. Accordingly it is observed in the *Retnácara*, her husband and the rest should voluntarily repay it. The sense of the text is this: her own property, which has been lent by a woman, seeing her husband or kinsman afflicted by disease or the like, he should voluntarily repay: so the *Chintámeni*. Consequently, say some lawyers, this disease is not such an extreme illness as impedes the performance of duties, nor does the creditor obstruct the performance of them: the text does not therefore contradict YÁJNYAWALCYA. That is wrong; for it contradicts the maxim, "a distinct import is inadmissible when coincidence is possible." Thus the sense is; he shall repay it by his own free will, not against his consent: the same is declared by YÁJNYAWALCYA, "he shall not be compelled to restore it against his will." This also is meant in the *Retnácara* and *Chintámeni*.

CCCCLXXXI.

CÁTYÁYANA:—Yet more; if he have taken a second wife, and no longer give his first wife the honour due to her, the king shall compel him, even by violence, to restore her property, though it was put amicably into his hands.

2. If suitable food, apparel, and habitation, cease to be provided for a wife, she may by force take her own property, and a just allotment *for such a provision;* or she may, *if he die,* take it from his heir:

3. This is a law of LIC'HITA; but after receiving *her own property and just allotment*, she must reside with the family of her husband; yet, if afflicted by disease, and in danger of her life, she may go to her *own* kindred.

If she have given her own wealth to relieve him in sickness or the like, or have amicably bestowed it in a season of calamity, and afterwards her husband, cohabiting with any other wife at pleasure, does not give her due honour in season or out of season; or if he do not give her food and apparel: in either case, she may by force take back her own property, though given when she saw her husband afflicted by disease or the like, and may take the allotment to which she is specially entitled. Consequently, she may also take from his heir, that is, from the brother or other near kinsman of the proprietor, the food, apparel, and the like, which ought to be received by her in that secular order.

This must be affirmed to be an ordinance of the legislator LIC'HITA; or this is a law of the written (*lic'hita*) code. But, after receiving this property, she must live with the family of her husband, and not go elsewhere inflamed with anger; for she ought to reside with her husband's family only. If sickness supervene, she ought to take remedies there only; but if a violent distemper occur, by which the loss of life becomes probable, and her husband does not provide suitable remedies, she may go to the family of her kinsmen, that is, to her father's family. The text is so expounded by VÁCHESPATI MISRA, following CHANDÉSWARA.

If a husband, although wealth have been amicably given by his wife, do not show her due honour, the king shall compel him, by force, to restore her property: such is the sense of the first verse. If he do not supply his wife with food and apparel, the king shall compel him to give her a just allotment for food, raiment, habitation, and the like, out of his own property: such is the sense of the second verse. This remark of SRÍ CRÍSHNA TERCÁLANCÁRA, commenting on the treatise of JÍMÚTAVÁHANA, is also accurate. But others consider this text (CCCCLXXXI 2) as relating to widows: consequently, if brothers-in-law and the rest do not give suitable food and apparel to the widow of their brother, she may claim her just allotment from her husband's brethren. The assignment of a share consists of a provision for food and clothes: hence the appositeness of *certain* texts, which declare the *widow's* right of succession to the estate of him who leaves no son, *and of other precepts*, which ordain partition, and which allot a mere maintenance, is obvious.

VYÁSA declares how much wealth ought to be given by a husband to his wife:

CCCCLXXXII.

VYÁSA:—A portion amounting to two in the thousand out of the whole estate should be given to a woman; that, and whatever wealth is bestowed on her by her husband, she may use as she pleases.

The word "husband" occurring in the last hemistich, the same term is presented in answer to the question arising on the first, "by whom should that portion be given?" JÍMÚTAVÁHANA.

Hence, after the death of a brother, the surviving co-heirs, having given two thousand *panas*, *or two* panas in the thousand (*for the term is explained in both senses*), may divide the residue among themselves: such is the meaning of the first hemistich. Lawyers who affirm, as the import of the last, that a woman has independent power over wealth given by an affectionate husband, even though it be the whole of his property, are thus contradicted; for, were such an import established, it would be an unprecedented exposition; for the word portion or heritage (*dáya*), taken in its derivative sense, signifies only wealth in general. More may therefore be given by any other person. If more than two thousand *panas*, or two in the thousand, be given, does that allotment legally become the exclusive property of the woman? CHANDÉSWARA considers it as invalid: for he has cited the text of VYÁSA, with this observation premised, "the legislator shows how much wealth may be given by her husband, over which a woman shall have exclusive dominion." The same *commentator* remarks, since the text limits *the donation* to the sum of two thousand *panas*, it follows, that, if the estate be small, a less sum should be given. In this term "*dwisahasra*," the suffix of etymology has been rejected after the numeral apposition: *panas* must be commonly understood when the number is mentioned; but the species or thing to be numbered is not particularized. But JÍMÚTAVÁHANA says, more should not be given: the prohibition of giving *more* is deduced from reason and from the letter of the text. It is not here supposed that the donation can be void. In both opinions, there is a contradiction to common sense; for two thousand *panas* must be given by him who possesses a hundred millions of things *bearing a certain value*, and by him who possesses a hundred things *of the same denomination*. Some lawyers reconcile this

difficulty by saying, arguments drawn from common sense have less force than positive law. Others say, that of which two are given is expressed by the word two (*dwi*), some term being understood, or the suffix of etymology being rejected. The sense of the term "*dwisahasra*" is deduced from this apposition; such *two* thousand, of which *one is given;* or else, that of which one thousand is the cause of giving two: it is an epithet of heritage or property (*dáya*). Consequently, two in the thousand must be given out of the property; such is the limit of donation: or else, one part out of two thousand *must be given*, that is, one in two thousand. Thus there is no trouble in explaining the terms; and the sense being completed by the word thousand, the suffix *a* should be admitted.

CHANDÉSWARA, reflecting on this contradiction to common sense, has inserted another interpretation: 'lawyers consider this text as relating to joint property;' because a text ordains, "what a man has himself acquired may be aliened at his pleasure." Thus, since it appears that a man may aliene at pleasure what he has himself gained, there can be no precept restricting donation to two thousand *panas*, for the purpose of conferring exclusive property on a woman: and thus, although it be the opinion of CHANDÉSWARA and the rest, that joint property may not be given away by an undivided parcener, still the gift of a trifle, through favour, to a wife, a son, and the like, is authorized: a greater sum is excepted; and more being given, the donation is void. Such is the whole import of that interpretation.

But the author of the *Pracáśa* says, more than two thousand *panas* must not be given to the wife of lepers and the rest, entitled to food and apparel only, and residing apart on food separately prepared.

In this case, since the maintenance is not regulated, the limitation of a sum would be irrelevant; it seems therefore that this allotment is given by the brothers or other kinsmen of their husbands, *to be held by those women* as their exclusive property. But the allotment for such women residing with the family and partaking of the same food is not limited; for due honour should be shown to them, as well as to the wives of other co-heirs. Since these three opinions, being contradictory, cannot all be followed in practice, the opinion of the author of the *Pracáśa* should be adopted, because it is *the most* ancient: other opinions have been here inserted for the sake of elucidating this, and of thereby obviating the objection which modern authors have set up against it.

If the father die after promising to give, as exclusive property, such a sum as may be *legally* bestowed on his wife, CÁTYÁYANA ordains, *that it shall be delivered by his sons.*

CCCCLXXXIII.

CÁTYÁYANA:—What has been promised to a woman by her husband, as her exclusive property, must be delivered by his sons, provided she remain with the family of her husband; but not if she live in the family of her father.

Consequently, there is no harm in not delivering to a woman who resides, of her own authority, with the family of her father, what has been promised to her as her exclusive property.

CCCCLXXXIV.

Cátyáyana:—But a wife who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of the property before described.

Kinsmen, resuming the exclusive property of such a woman, may take it to themselves. The *Viváda Chintámeni.*

"Acts injurious to her husband;" the administering of poison or the like. "Who has no sense of shame;" who goes to other towns on false pretences or the like. "Who destroys his effects;" who incurs expenses for immoral purposes.

Wealth was conferred for the purpose of defraying sacrifices; therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties.

This text is cited by Jímútaváhana and the rest, under the title of Succession to the estate of him who leaves no male issue (CCCCXIII): it is likewise inserted by Chandéswara in this place.. Consequently, "distribute" here positively intends donation, and the taking of an inheritance. The distributer is the king, or any other person. Or the denial of donation, and of succession to an inheritance, *are meant;* the one expressed, the other implied by parity of reasoning. But let him not distribute it among women, ignorant men, or those who neglect their duties: such is the construction of the sentence. Consequently, peculiar property should not be given to a woman solely by the will of the donor, but should be conferred with due attention to her good qualities and the like, and in proportion to her wants.

Sect. II.—*On Succession to the Exclusive Property of a Woman.*

Art. I.—*On the Succession of her Issue Male and Female.*

Sons and daughters shall jointly succeed to such property left by their mother, under the text of Menu (IV). He himself makes that evident.

CCCCLXXXV.

Menu:—On the death of the mother, let all the uterine brothers and the uterine sisters, *if unmarried*, equally divide the maternal estate: *each married sister shall have a fourth part of a brother's allotment.*

The text of Náreda (CCCCLXI) will be referred to wealth received on account of marriage. It should be understood that debts must of course be paid; for the succession is similar to the inheritance of the paternal estate; and a daughter is also considered as an heir.

CCCCLXXXVI.

Yájnyawalcya:—Let the sons, after the death of their parents, equally share the assets, and equally pay the debts of the deceased: what remains of a mother's fortune, after payment of her debts, her daughters inherit; if there be no daughters, their issue.

The words "sons shall divide," and "after death," are repeated from the first hemistich; consequently, after the death of their mother, sons and daughters shall divide her fortune: such is the construction of the phrase. But, according to ancient authors, "after the death of their parents" must be repeated in the second hemistich; for a son, not being his own master while his father lives, cannot regularly divide that fortune. The same likewise is nearly deduced from the interpretation of JÍMÚTAVÁHANA and the rest.

Or unmarried daughters only shall take an equal share with a son, not a married daughter.

CCCCLXXXVII.

VRĬHASPATI:—The property of a married woman goes to her sons; but her daughter, if unmarried, has an equal share of it; if she be married, she inherits not, *in that case*, the wealth of her mother.

The term "offspring" here relates to her sons.

CHANDÉSWARA, JÍMÚTAVÁHANA, and the rest.

CCCCLXXXVIII.

SANC'HA and LIC'HITA:—All uterine brothers and virgin sisters are entitled to equal shares of *the* wealth *left by their mother*.

CCCCLXXXIX.

DÉVALA:—A married woman being deceased, her property goes to her son and *unmarried* daughter, as parceners: if she leave no issue, let her husband take it, her mother, her brother, or her father.

CCCCXC.

GÓTAMA:—A woman's estate goes to her daughter not betrothed, *then* betrothed only, *or lastly married*.

On this text of GÓTAMA, and taking the literal sense of the precepts of NÁREDA and YÁJNYAWALCYA, daughters succeed first to the separate property of a woman; on failure of them, a son: but that is contradicted by MENU, VRĬHASPATI, and DÉVALA; for they expressly declare the equal title of the son and daughter. Thus, a son succeeds to the separate estate of his deceased mother, but an unmarried daughter has an equal title with him; on failure of either of them, the other inherits *the whole*: in default of daughters not affianced, one who is verbally betrothed shall inherit; for she is separately mentioned by GÓTAMA. CHANDÉSWARA.

MISRA, CHANDÉSWARA, and CULLÚCABHATTA, read the last measure in the text of VRĬHASPATI, "she receives a trifle as a mark of respect" (*labhaté mána mátracam*). Hence, from the concurrent import of the text of VRĬHASPATI, that of MENU likewise is thus expounded by CHANDÉSWARA: 'unmarried sisters only have equal shares with their brothers; but to married sisters some trifle must be given as a mark of respect, in proportion to the estate.' MISRA concurs in that opinion. But CULLÚCABHATTA says, out of the maternal estate the fourth part of a share shall be given to married sisters, as a quarter of a share is allotted to unmarried sisters out of

the paternal estate. JÍMÚTAVÁHANA reads, "she shall not inherit the wealth of her mother" (*sa labhén mátricam dhanam*); and adds, on failure either of a son or of an unmarried daughter, the other inherits the whole; in default of both, the claim of married daughters who have or may have sons is equal.

What proof is there that a married daughter shall in this case inherit the separate estate of her mother; for sister, daughter, and other terms in the texts of MENU and the rest, relate to unmarried daughters only? Lawyers thus reconcile the seeming difficulty: the word issue occurring in the text of DÉVALA, and a married daughter being issue of her mother, both she who has and she who may have a son are entitled to inherit. Then a barren or widowed daughter should also succeed? They do not inherit, because they cannot confer a benefit on their mother; but she who has, or may have, male issue, can confer a benefit by means of her son. *So JÍMÚTAVÁHANA.

But some lawyers hold, that, on failure of unmarried daughters, a married one shall have an equal share with a son; for no distinction in respect of daughters is mentioned in the texts of MENU, NÁREDA, YÁJNYAWALCYA, and VAŚISHT'HA: but the text of VRĬHASPATI relates to the case where an unmarried daughter exists: and even on the text of GÓTAMA, as there is an order of succession to the paternal estate, so there is in the present instance; but with this distinction, that a son and daughter jointly succeed. That opinion should be rejected, being unnoticed by esteemed authors.

SRÍ CRĬSHNA TERCÁLANCÁRA and others hold, that unmarried daughters, whether verbally betrothed or not, shall at the same time take equal shares. Does it not appear, from the separate mention of them in the text of GÓTAMA, that their title is successive? To this we reply, since it is acknowledged that *the succession of* a daughter who has been betrothed is barred by *the claim of* one who has not been affianced, both cannot have an equal right to inherit with their brother: one who has an equal title with the preferable heir, cannot be reduced to an equal succession with one who would have been excluded *by that heir;* for stronger and weaker claims cannot, in the same circumstances, be equal. But, as a son, who would be debarred by the existence of his own father, has an equal claim to the patrimony with his paternal uncle, who had an equal right with his father, so likewise, in the present instance, *a betrothed daughter, who would have been debarred by a daughter not betrothed, has an equal title with a son who had an equal title with the daughter who was not betrothed.* As for the argument, that a son's son, whose own father is dead, confers benefits by the oblation of single and double sets of funeral cakes, but not while his own father is living; this consequently, not the intervening right of his father, is the cause why he does not receive the heritage: that is futile, for the great-grandson, whose own father is dead, must necessarily be debarred by his paternal grandfather. Therefore, as it is not admitted that paternal uncles and the rest *on the one part*, and a brother, his son, or grandson, *on the other*, debar or are debarred by each other, so likewise it is not admitted that a son *on the one part*, and a daughter not actually married *on the other*, debar or are debarred by each other. But this and other inferences are not admitted by RAGHUNANDANA and the rest.

The text of GÓTAMA relates to property received at the time of the nuptial ceremony. So,

CCCCXCI.

MENU and the *Mahábhárata*:—That which was given to her mother at the time of her marriage shall become the share of the virgin daughter alone.

The daughter not verbally betrothed, whom the legislator calls a virgin daughter, shall take the property which was given on the bridal procession of her mother. To the question, who succeeds in her default? the answer is, a daughter only betrothed, as ordained by GÓTAMA; but, on failure of her, the married daughter, who has or may have a son; as suggested by the text of VAŚISHT'HA.

CCCCXCII.

VAŚISHT'HA:—The paraphernalia of the mother her female issue shall inherit in equal shares.

On failure of such a married daughter, a son succeeds; in default of him, a barren or a widowed daughter, for they also are issue of the mother. Such is the opinion of JÍMÚTAVÁHANA:

The opinion of CHANDÉSWARA should be here followed. But as for the explanation of the word *apratish't'hitá*,* proposed by MISRA and CHANDÉSWARA, (one whose husband is indigent, and who is unfortunate,) it has been censured by JÍMÚTAVÁHANA and the rest, because there are no grounds direct nor argumentative for such an exposition. As for the word paraphernalia (*párináyya*) in the text of VAŚISHT'HA, which is expounded by MISRA and CHANDÉSWARA, 'female apparel, mirrors, bracelets, and the like,' that explanation might be admitted, if it did not contradict the rule for expounding phrases of scripture and of law in a literal sense: but it is improper to interpret the words of scripture and of law in a secondary sense, or by construction with remote terms, by repetition and the like; for otherwise, words becoming *similar to* the milch cow which gratifies every wish, all words would be presented in all senses, and there would be no certainty of the meaning. The same remark should also be extended to other *parts of the sentence*, lest the term "woman" (*interpreted female issue*) be taken in various senses by an *implied* repetition, under the rule, *that the plural number* is an abridged form *of the single term thrice or oftener repeated*. Consequently, admitting no distinction of daughters unmarried or married, they *all* have an equal claim to the female apparel and the like. Thus some lawyers. But that is wrong; for, in the gloss on the text of YÁJNYAWALCYA, the same rule is applied to wealth given on her marriage, and to the paraphernalia *of a married woman*. Consequently this term has been expounded as signifying female apparel and the like, on the consideration that the word was so used by ancient authors.

The right of the daughter in preference to the son is founded on the mention of daughters in the text of YÁJNYAWALCYA (DI). It should not be argued, that this word relates to unmarried daughters: to the question who shall inherit on failure of them, there would be no certain answer.

Like other separate property left by a married woman, a daughter inherits this also on failure of sons. It should not be argued, 'be the law 'as it may in other cases, still the son, as issue of the mother, has, in this 'instance, a right of inheritance on failure of a daughter, *not in preference*

* Translated "betrothed only."

'*to her*, for the term "her" or their, in the text of NÁREDA (CCCCLXI), 'intends the mother.' Even in that case the difficulty is removed by referring the word daughter to the unmarried one, upon the coincidence of the text of MENU; and the word "her *or their*" may intend the married daughter immediately presented *by the order of the sentence.* Connecting the word "daughter," which signifies female offspring of the mother, with "issue," signifying progeny, the sense exhibited is "issue of the daughter:" the supposed objection, that a person or thing cannot be *spoken of*, at the same time, *as* effect and *as* cause, is thus obviated. If the word "issue" implied son of the mother, the word "her" or "their" would be unmeaning; for, without that term, the word mother is already presented in the phrase "daughters *share the wealth* of their mother."

It should not be objected, that the succession of the daughter in preference to the son is suggested by the text of YÁJNYAWALCYA (CCCCLXXXVI); because, the word "her" or "their" not being found in that text, the meaning must be 'issue of the mother.' Since there is no argument to prove the restriction of that text to wealth received at the time of marriage, it has been already expounded as relating to the estate of a married woman in general; and the word "issue" always requiring the reference to a parent, it should be joined in construction with the nearest term "daughter." It should not be objected, that, in answer to the question arising on this interpretation of the phrase, "if there be no female offspring, then male issue," the mother is most naturally presented, being already placed in construction as the parent. Lest another text (DI) become a vain repetition, this precept must be explained as relating to other property of a woman, except that which she received at her marriage: it is therefore improper to affirm that the son succeeds on failure of daughters, and the interpretation therefore is not simple. Consequently the terms ought only to be understood in this sense, "issue produced by them."

Again: this text does not relate to wealth received at the time of marriage; it is therefore confirmed that no proof exists of the right of a married daughter to inherit, in preference to a son, wealth received *by her mother* at the time of marriage. To this it is answered, the joint right of all daughters being deduced from the text of YÁJNYAWALCYA, because that attributes a right to daughters as such, the order of succession, propounded by MENU and GÓTAMA, is not ordained by YÁJNYAWALCYA; *but* the word "daughter" intends secondarily an unmarried one. Hence all daughters first inherit successively; on failure of them, the son has a demonstrated title.

The general right of daughters and sons to take equal shares being deduced from the text of MENU, and from that of YÁJNYAWALCYA, above cited, the order of succession is only suggested by the text of VRÍHASPATI: does it not follow, therefore, that a son and a married daughter have an equal title to the estate of a woman other than wealth received at her marriage? It should not be objected, that the equal participation of one who was debarred, with one by whom he was debarred, is contrary to common sense. It has been already stated, that this must be admitted in the case of wealth inherited from ancestors: in the instance of a title deduced from reasoning, argument, which justifies the equal claim of one by whom another is debarred, cannot indeed justify the equal claim of one who was debarred by him; but in a case expressly ordained by law it is otherwise. Thus, since reasoning is not in this case adduced to prove the equal title of the son and of the daughter, their equal claims must be affirmed to be solely deduced from

express law; and if the equal title of one who was debarred, and of one by whom he was debarred, have been propounded in express texts of law, then only can it be admitted?

To the question thus proposed the answer is, No; for the exclusion of the married daughter, if there be a son and an unmarried daughter, is suggested in a portion of a text above cited (CCCCLXXXVII), as read by CHANDÉSWARA; and it has been already established by investigation, that a married daughter inherits only on failure of both, since there is no ground for selection.

CCCCXCIII.

CÁTYÁYANA:—On failure of daughters, that estate *of a married woman* shall descend to her son; but, in default of her parents and brothers, what she received from her kinsmen devolves on her husband:

2. Married sisters shall share with kinsmen: this law, concerning the separate property of a woman, is ordained in the case of partition.

Consequently, since there is no proof that the word "daughter," which occurs in the texts of many legislators, must be taken in a secondary sense; and since the order of succession is delivered in the plural number, it must be considered as demonstrated that sons succeed on failure of all daughters. On the opinion of RAGHUNANDANA and the rest, this becomes an easy inference; for they do not admit that the person who was debarred, and the heir by whom he was debarred, can participate equally.

CCCCXCIV.

VISHNU, after premising "forms of marriage:"—In all forms of the *nuptial* ceremony, the estate of women who leave issue descends to their daughters.

CCCCXCV.

MENU:—If a widow, *whose husband had other wives of different classes*, shall have received wealth at any time *as a gift* from her father, *and shall die without issue*, it shall go to the daughter of the *Bráhmaní* wife, or to the issue of that daughter.

JÍMÚTAVÁHANA infers, from the special mention of "wealth received from her father," that property given by her father, at any other time but that of the nuptial ceremony, shall go to the daughter: the word *Bráhmaní* is a *mere* repetition. Consequently, since the term *Bráhmaní* merely suggests lawful *marriage*, wealth given by their fathers to women of any class shall descend to their daughters, not to their sons while a daughter is living. Disapproving the *vain* repetition supposed in this interpretation, he subjoins another explanation; 'or, lest the word *Bráhmaní* should become a *vain* repetition, the text may be explained as signifying, that the daughter of the *Bráhmaní* wife shall take the wealth which the *Cshatriyá* or other wives, leaving no issue, had received from their fathers: the separate property of a woman who leaves no issue does not devolve on her husband. Thus the whole text is well interpreted.' CHANDÉSWARA and CULLÚCABHATTA adopt this explanation. It should not be argued, that the text does not ordain the right of a daughter by another wife, but limits succession in favour of one

born of a *Bráhmaní* woman in lawful wedlock. The words "received from her father" would be unmeaning; and many phrases must be taken in a secondary sense. if texts, expressed in general terms, must be referred to a limited import, in consequence of a distinction taken in regard to daughters. As for the notion that the text is intended to show the succession of the *Bráhmaní* daughter to wealth given by a father or other kinsman on any other occasion but the nuptial ceremony, that also is not approved by authors; for there would be a disparity in the repetition of laws concerning presents given at the nuptial ceremony, and those which are bestowed on other occasions.

It should be here remarked, that, although daughters by other wives of various classes be living, the *Bráhmaní* daughter by another woman succeeds to the wealth which had been at any time given by their fathers to the *Cshatriyá* and other wives who leave no issue. In like manner, since a daughter by another wife is found to have a prevailing claim to wealth given by a father in preference even to a son by another wife, a married woman's own daughter must also have a prevailing title in preference to that woman's son : a daughter should therefore inherit, although a son exist. It is accordingly said in the *Retnácara*, the paraphernalia of a married woman, presents given on her marriage, and wealth given to her by her father, descend to the son, on failure of daughters. The gloss of MISRA contains an exception; whatever has been given by any other person but her father, goes to her brothers and sisters. This has not been noticed by JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest; and no obvious authority is found, except the text of CÁTYÁYANA, containing the word "that" (CCCCXCIII). The author of the *Mitácshará* says, the term *Bráhmaní* intends wife of the highest class; consequently, on failure of the *Bráhmaní*, the daughter of the *Cshatriyá* wife shall take the wealth which a *Vaiśyá*, who leaves no issue, had received from her own father. That is not admitted by SRÍ CRĬSHNA TERCÁLANCÁRA, because JÍMÚTAVÁHANA, not perceiving any authority for it, has not stated that *opinion*.

"Her issue" (CCCCXCV) ; the son of that daughter, that is, the daughter's son of that other wife. "Wealth received from her father:" this is merely illustrative of every sort of separate property held by women; so the authors of the *Médhatit'hi* and *Pracáśa*, unsupported *by other commentators*. The opinion of CHANDÉSWARA and the rest is not there contemplated.

Who is heir to the separate property of a married woman, on failure of sons and daughters? JÍMÚTAVÁHANA replies, the son's son is heir to the separate property of a married woman, excepting presents given at her marriage; for he confers benefits by offering the funeral cake in the double set of oblations. Why does not the son's son inherit, in preference to the daughter? It should not be answered, he does not inherit; because there is no argument to establish the succession of a grandson distant by an interval, since the text of NÁREDA declares the right of the daughter immediately after that of the son (CCCCXIX). Since that text is inserted by JÍMÚTAVÁHANA under the title of Succession to the estate of him who leaves no male issue, the word 'son' must necessarily signify male issue by males as far as the great-grandson.

To the last question proposed the answer is, the succession of a daughter to the separate property of her mother is expressly ordained by law, not deduced from reasoning. Were it inferred from argument, she would have

no right if a son existed. Hence it is improper to contest her right, which is suggested generally by her relation as daughter: it could only be resisted by the authority of a special text, if such there were. But other lawyers hold, that a daughter is heiress in the first place, solely because she sprang from the body *of the mother;* else the right of the daughter would be subsequent even to that of a daughter's son. Neither has the daughter's son an equal claim with the son's son, nor yet a prior claim; for the son of a married daughter, who is *herself* debarred *by a son*, is excluded by the son of a son, by whom the daughter was debarred. But SRÍ CRÍSHNA TERCÁLANCÁRA, adopting this reasoning, affirms the prior title of a daughter's son to inherit wealth given at the nuptial ceremony. This, therefore, is the decision: on failure of sons, a daughter's son is, in the first place, heir to wealth given at the nuptials; in default of him, the son's son: but, to property which was not given at the marriage, the son's son is heir, on failure of married daughters; and in default of him, the daughter's son.

Some lawyers ask, admitting the succession of a daughter under the authority of the text, although she confer no benefit *on her parents*, how can a daughter's son inherit?

CCCCXCVI.

SÁTÁTAPA:—After the first annual obsequies by the *sapindas*, whatever is given *at the monthly rites* to ancestors *by the son of the deceased*, his mother has a share of the benefit: this is a settled rule in all systems of religious and civil duties.

If it be argued, from this text of law cited by RAGHUNANDANA, that a daughter's son also confers benefits on his maternal grandmother, because she has a share of the funeral cake offered to his maternal grandfather, since the word "ancestors," (literally, fathers,) intends three paternal and three maternal forefathers, namely, the father and the rest, and the maternal grandfather and so forth; and the word "mother" intends three female ancestors ascending from the mother, and three other female ancestors ascending from the maternal grandmother; *these lawyers reply*, the word "ancestors" intending three persons ascending from the father, there are grounds for taking the word "mother" in the large sense of mother, paternal grandmother, and paternal great-grandmother, namely, the coincidence of the text formerly cited (CCCCXXXII), and of the following precept:—

CCCCXCVII.

At obsequies on the day following the eighth lunar day in certain months,* at those with a triple set of oblations, at *Gayá*, and at the anniversary obsequies, the son should separately perform a *śrádd'ha* to his mother; in other cases he should perform obsequies to her with her lord.

For it is there shown, that, in other instances, the *śrádd'ha* should be performed to those women with their lords, for whom it is separately performed by the followers of the *Yajurvéda* at the obsequies mentioned. But if this be taken as an indirect authority for considering the word "mother" as bearing the secondary sense of maternal grandmother, then she is in truth

* *Anwashtacá*; on the ninth lunar days of *Pausha*, *Mágha*, and *P'hálguna*; and with some, in *'Aswina* also. T.

benefited by her daughter's son: yet SRÍ CRÍSHNA TERCÁLANCÁRA objects *to this*, the remark of A'CHÁRYA CHÚD'ÁMAN'I, that the son of an uterine sister, and the son of a sister by a different mother, have an equal title to the estate of him who leaves no male issue *nor near heir*. They could not, say some lawyers, have an equal right of succession, if the maternal grandmother could be benefited by her daughter's son. That is futile; for the succession of the daughter's son is deduced from a text of VRÍHASPATI which will be cited; and he has, as issue of his grandmother, a legal right of succession under the text of MENU (XLII), before her husband there mentioned, but after her son's son; and the texts of NÁREDA and YÁJNYAWALCYA (CCCCLXI and CCCCLXXXVI) *suggest his succession*.

Admitting the succession of a daughter's son, but after the great-grandson in the male line, should he not also succeed to wealth given at the nuptials, after both the grandson and the great-grandson in the male line, *not before either of them?* No; the right of the daughter's son being ordained by texts of law, the further order of succession is established by reasoning; and that reasoning is here founded on proximity, and on the similar mutual exclusion of the remoter offspring of those who debar and are debarred by each other. Then the son's son is not heir, because he is not mentioned in the text, and surely the son of that grandson *has no claim*? The right of the daughter's son being barred, this suggests the right of the son's son to wealth other than that which had been given at the nuptials; but a son's son, and the son of that grandson, shall succeed before the husband to wealth given at the marriage, because they are issue of the woman. If the great-grandson in the male line inherit in right only of his being issue of the woman, may not his son or remoter descendant also inherit? Both lineal descent and benefits conferred are causes of inheriting the separate property of a woman; for the word "him" is not limited to the masculine gender in the text of MENU, "even the son of a daughter delivers him in the next world, like the son of his son;" and that text must be considered as relating to the son of an appointed daughter, but not restrictively, that the verse of the *Mahábhárata* (CV) may coincide with it. Since the rights of a son's son are attributed to a daughter's son, the son of a daughter inherits after the son of a son; but he is first heir to the wealth given at nuptials, because, say lawyers, his mother is in this instance chiefly considered.

The daughter of a daughter is not heiress with the son of a daughter, nor after him, nor before him; for no law ordains her succession. As for the subjoined text of MENU, it shows that some trifle shall be given as a mark of respect by the son and by the daughter, not that a share shall be received by the daughter of a daughter; for the text expresses "something," *that is, some trifle;* and the expression "should be given," suggests the brother and sister as the givers, which would be improper if she had an equal right of inheritance with them.

CCCCXCVIII.

MENU:—Even to the daughters of those daughters it is fit that something should be given, from the assets of their maternal grandmother, in proportion to the allotments, on the score of natural affection.

"In proportion to the allotments;" in proportion to the great or small amount of the assets. The *Retnácara*.

But VÁCHESPATI BHATTACHÁRYA says, something must be given to the daughter's daughter, whose own mother is dead; and that must be given by a married daughter, not by a son, nor by an unmarried daughter: but if the wealth were received at the nuptials, *something must be allowed* even by a son; and that something which is given shall be proportionate to the share of her mother, as the son's son, whose own father is dead, receives a share of the property left by his paternal grandfather. It is proper therefore to refer the word "those" to the persons who make the partition.

The comprehension of the married daughter in the text preceding this (CCCCLXXXV) is not universally admitted; for the unmarried daughter may be intended by the word "sister." The succession to the separate property of a woman does not, like the inheritance of an estate left by a man, extend to the third in descent: this objection to that commentary should also be examined.

VÁCHESPATI MISRA likewise affirms, that, on failure of daughters, the son and the daughter of a daughter inherit under the text of MENU. To this again it may be objected, say *some* lawyers, that, according to MISRA and CHANDÉSWARA, the son of a daughter succeeds, on failure of daughters, to the wealth given at nuptials, although a son exist, under the text of NÁREDA and YÁJNYAWALCYA above cited. That is questionable; for the full import of the text of YÁJNYAWALCYA relates to other sorts of property except wealth given at nuptials, since another precept of YÁJNYAWALCYA (CCCCLXXXVI) would be a vain repetition if this text related to wealth given at nuptials. The precept of NÁREDA also may bear the same import; for the word "sons" in his text (CCCCLXI) may be brought *from the first hemistich into the last*: in both instances, it is more proper to carry forward the word sons *into the second hemistich*, than to attribute the limited sense of wealth received at nuptials to the words "estate" and "assets," which denote property in general, and which are already carried forward *into the last hemistich of each text*; and the son of a daughter is inferior, in comparison with the woman's own son.

JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, affirm the right of the son to inherit wealth given at nuptials, in preference to the daughter's son. On failure of both grandsons, RAGHUNANDANA holds, that the great-grandson in the male line *shall inherit*. JÍMÚTAVÁHANA admits the right of a great-grandson in the male line. But that reading, in the treatise of RAGHUNANDANA, authors consider as an error of the transcriber. This is not elegant; for it is wrong to suppose that JÍMÚTAVÁHANA, who asserts the succession of a daughter in right of the funeral cake offered by her son at the double set of oblations, should not admit the succession of a grandson in the male line who does himself offer the funeral cake. Accordingly SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on his treatise, says, 'on failure of heirs as far as the daughter's son, succession, extended to the great-grandson in the male line, is suggested indirectly.' The right of a great-grandson by males, on failure of grandsons in either line, is therefore demonstrated. In default of him, barren or widowed daughters succeed; for they also are issue *of the woman*. So RAGHUNANDANA and JÍMÚTAVÁHANA.

But others hold, that these *female heirs* succeed merely as daughters; they were before debarred by persons who confer benefits on *the female ancestors*, but have now gained the opportunity *of asserting their claim*. Is not this inaccurate, since the son of a daughter confers no benefit *on his maternal grandmother?* If it be said, benefiting her husband and the rest,

he mediately confers benefits *on her;* it is answered, a married daughter would in that case succeed in preference to the son's son. To the question thus proposed the answer is, since a married daughter may confer benefits on the husband of her mother by means of her son, she, who thus affords some advantage, being at the same time "daughter," and "issue of the body" *of her mother*, cannot be debarred by those who confer greater benefits; for the advantages afforded are not principally considered in treating of separate property held by women. But barren and widowed daughters, conferring not the least benefit, ought to inherit after the great-grandson in the male line, but before the husband, because they are daughters, and sprang from the body of their mother. Then, should not these two inherit before the grandsons of a son, whether in the male or female line *of descent from him? It may be answered,* what should prevent their succession to this property, any more than to the estate of one who leaves no male issue?

But others again affirm, since there is no proof that the funeral cake offered at the double set of oblations shall be chiefly considered in the succession to separate property held by women, therefore the barren and widowed daughters who offer the anniversary cake may inherit before a daughter's son.

Why do not a son, a son's son, and the son of a grandson, jointly inherit the estate of a married woman, as they do the property left by a man? It should not be answered, they inherit jointly on the sole authority of a text of CÁTYÁYANA, which relates to the subject of succession to the property of a man (LXXIX); but it is not so in the present instance, because there is no such text. Although that might be alleged on the opinion of CHANDÉSWARA and others, it cannot be affirmed conformably with that of JÍMÚTAVÁHANA and the rest; *for* texts relative to the inheritance of property left by men (CCCCXCVIII, &c.), may be adduced under the title of Succession to the separate property of women. It should not be said, that is admissible; the son's son, whose own father is dead, may claim the estate of his paternal grandmother, as *he may* the property of his paternal grandfather; and thus the remark of JÍMÚTAVÁHANA, "a son's son inherits on failure of daughters," is intended to exclude a son's son whose own father is living. In saying "a son's son shall inherit on failure of daughters," what is the import of that term? If one whose father is living be meant, terms denoting the failure of daughters are superfluous; for a married daughter has no present claim, since the father of that grandson has the sole right of inheritance: if one whose father is dead be meant, why is the failure of daughters required, since he shares equally with an unmarried daughter? Thus neither would be apposite.

To this some reply, JÍMÚTAVÁHANA does not deduce the rule of succession to the estate of a woman, from a text relative to the inheritance of property left by a man; but on some occasions he cites a text concerning this subject, in a form of illustration, to confirm *the rule otherwise deduced:* thus, the same reasoning not being equally applicable to the property of a man, and to that of a woman, it is improper to deduce rules concerning the estate of a woman from texts relative to property left by a man.

Wealth given at the time of marriage (*yautuca*) has been mentioned, what is meant by that term? Know, that it signifies any thing received at the time of marriage. From the verb *yu* mix, is derived *yuta*, by adding the neuter suffix of abstraction; it therefore presents the sense of mixture. Now, under the authority of the *Véda*, an union of bride and bridegroom takes place at the time of marriage; what is then received is called *yautaca*, reading the word, as JÍMÚTAVÁHANA does, without the *u*: but a various reading with

the letter *u* occurs in some instances; and that is regularly derived from *yutu*, which again is regularly deduced from the crude verb *yu*, by subjoining the suffix *tu*.

The forms of the nuptial ceremony are eight, distinguishing the marriages called *Bráhma*, *Daiva*, *Ársha*, *Prájápatya*, *Ásura*, *Gándharva*, *Rácshasa*, and *Paisácha*: these are described by YÁJNYAWALCYA.

CCCCXCIX.

YÁJNYAWALCYA:—In the *Bráhma* nuptials the damsel is given *by her father*, when he has decked her as elegantly as he can, to the bridegroom, whom he has invited; in the *Daiva*, to the priest employed in performing the sacrifice; in the *Ârsha*, to the bridegroom, from whom he receives, *for religious purposes*, a bull and a cow:

2. When the father gives her to a suitor, saying, "perform all duties together," the marriage is named *Cáya* (or *Prájápatya*); and a son produced by it confers purity on himself and on six descendants in a male line:*

3. An *Ásura* marriage is contracted by receiving property from the bridegroom; a *Gándharva*, by reciprocal amorous agreement; a *Rácshasa*, by seizure in war; a *Paisácha*, by deceiving the damsel.

4. The four first *are approved in the case* of a priest; the *Gándharva* and *Rácshasa* marriages *are* permitted for a soldier; the *Âsura* ceremony *is peculiar* to mercantile and servile men; the *Paisácha* marriage is reprobated for all.

They are called *Bráhma*, and so forth, to intimate praise or blame. 'This *first* ceremony is proper for *Bráhmanas* and the rest, and therefore called *Bráhma*:' such is the meaning suggested by the legislator.

When a damsel, decked with ornaments, is given *by her father* to the bridegroom, whom he has invited to his own house, it is a *Bráhma* marriage, or *ceremony of* Bráhmanas, the first form of the nuptial rites: that marriage in which the damsel is given to the family priest attending a sacrifice at the time when the sacrificial fee should be given, is termed *Daiva*, or *the ceremony of* Dévas, the second form: the gift of a damsel after having received from the bridegroom one pair of kine, *or* with *the delivery of* one pair of such cattle, is named *Arsha, or the ceremony of* Rishis, the third form: when a damsel is given to any person asking her in marriage, with these words *pronounced by the giver*, "perform all duties together with her," it is denominated *Prájápatya*, or *the ceremony of* Prajápatis; another name for it is *Cáya*, derived from *Ca*, which signifies *Prájapati*, according to dictionaries; this is the fourth form: the gift of a daughter to a bridegroom, taking from him wealth other than a pair of kine, *merely* at his own choice, without any authority of law, is named *Ásura*, or *ceremony of* Asuras, the fifth form: when there is reciprocal connexion with mutual desire, the marriage is called *Gándharva*, or *ceremony of* Gandharvas, the sixth form: the seizure of a maiden after overcoming her father in battle, or

* I complete the citation, which is imperfect in the original. T.

the abduction of her by force *from her house*, is denominated *Rácshasa*, or *ceremony of* Racshasas, the seventh form: the seizure of a damsel by fraud, while sleeping or intoxicated, is termed *Paisácha*, or *ceremony of* Pisáchas, the eighth form of nuptial rites. Of these modes, four, the *Bráhma*, *Daiva*, *Arsha*, and *Prájápatya*, are *legal* for a *Bráhmana;* the marriage styled *Gándharva*, and the seizure of a maiden in war, are peculiar to the *Cshatriya;* the *Ásura* marriage is permitted for a *Vaisya* and a *Súdra;* the *Paisácha*, forbidden to them, should be practised by no person whomsoever. Such is the exposition approved by SÚLAPÁNI.

At present, the *Bráhma* nuptials only are practised by good men; but even the marriages called *Ásura*, *Gándharva*, *Rácshasa*, and the rest, are sometimes practised by others.

"Marriage" is a rite to be performed by the bridegroom, and which completes the regenerating ceremonies; since the act of receiving *the bride* effects it, the term has been also used *in this gloss* as signifying the gift *of a maiden*. The nuptial rites are necessary even in the marriage named *Gándharva* and the rest.

D.

DÉVALA:—Nuptial rites are ordained in the marriage styled *Gándharva* and the rest; to this contract the nuptial fire must be made witness by men of the three classes.

The second marriage of a woman who had been already espoused by another man, is called by AT'HARVAN, a regenerating ceremony: this marriage also falls under the description of *Gándharva* rites.

Wealth received at the time of marriage in any one of such eight forms, is denominated *Yautuca*. On this MISRA remarks, that wealth received at the time of marriage, in the form called *Bráhma* and the rest, goes to the daughters.

ART. II.—*On Succession to the Separate Property of a Woman leaving no Issue.*

DI.

YÁJNYAWALCYA:—A married woman dying without issue, her property received at *Bráhma* nuptials, or even in other four unblameable forms of marriage, it goes to her husband; if she leave issue, it descends to her daughters; but, in other forms of the nuptial ceremony, her property then received goes to her father *and mother*.

"At *Bráhma* nuptials and the rest:" here, by a strange etymology, when connecting "four" with these terms, the apposition is in the form called *bahubríhi*, joining terms which have not the same attribute; the meaning is, other four forms of marriage besides the *Bráhma* ceremony, namely, the *Daiva*, *Ársha*, *Gándharva*, and *Prájápatya*. But, when connecting this part of the sentence with "property received," the apposition is in the form called *bahubríhi*, joining terms which have a common

attribute; consequently, the meaning is, property received at those marriages, as well as at *Bráhma* nuptials. But some lawyers say, even though such an etymology be established, wealth received at those four specified marriages is not presented *by the terms of the phrase;* for, admitting the order propounded by YÁJNYAWALCYA himself, the *Ásura* ceremony is included in five forms of marriage counted from the *Bráhma* ceremony; and the *Gándharva* is excluded: the apposition therefore is in the form called *bahubríhi*, joining terms which have the same attribute; as in the expression "bring the long-eared *animal*," which denotes the bringing of one which has long ears, so, in the present instance likewise, the expression denotes "four marriages including the *Bráhma* ceremony: the apposition is not in the form called *bahubríhi*, joining terms which have not the same attribute, as in the example, "bring him who has the painted cow," and in other instances, where the sense really presented is, 'bring the owner of the painted cow,' not the cow also. Consequently, the meaning is, 'wealth received by a woman during the celebration of nuptial rites in the forms called *Bráhma*, *Daiva*, *Ársha*, and *Prájápatya*, her husband obtains, if she die without issue.' But this contradicts the precept of MENU; for the *Gándharva* marriage is also included in his text.

DII.

MENU:—It is ordained, that the property of a woman married by the ceremonies called *Bráhma*, *Daiva*, *Arsha*, *Gándharva*, and *Prajápatya*, shall go to the husband, if she die without issue.

To this alleged contradiction it is answered, the particle "even" connecting the terms with something understood but not expressed, the ceremony named *Gándharva* is also included: "other forms" are the *Ásura* rites and the rest, omitting the *Gándharva* marriage; for that is already included in the first hemistich by the words "or even." It goes to her "father;" the meaning is, it goes to her father and mother, the last term being understood: so,

DIII.

MENU:—But her wealth given on the marriage called *Ásura*, or on either of the *two* others, is ordained, on her death without issue, to become the property of her father and mother.

DIV.

NÁREDA:—The property of married women shall descend to their children; and legislators ordain, that, if women leave no issue, their property received at the marriage called *Bráhma*, or other four unblamed nuptials, shall go to their husbands; received at other marriages, it goes to their parents.

Here "four," *taken inclusively*, is not intended to except a fifth: hence, in the marriages called *Bráhma*, *Daiva*, *Ársha*, *Gándharva*, and *Prájápatya*, the wealth of a married woman who leaves no issue goes, on her death, to her husband; in other forms of marriage, namely, the *Rácshasa*, *Ásura*, and *Paisácha* nuptials, it goes to her father. This relates to wealth received by a woman at the time of her marriage. The *Retnácara*.

"It is not intended to except a fifth:" consequently, wealth received at four of the nuptial ceremonies, necessarily goes to the husband; but, in the form of marriage which is different from those four, it devolves, in some instances, on the husband; in others, on another heir. In like manner, under the precept, "received at other marriages, it goes to their parents;" the wealth of married women received at certain other marriages, devolves on their parents, but not what has been obtained at nuptials different from those others; which implies an exception of other persons in those other forms of marriage.

In the marriage called *Rácshasa* and the rest, if the father, or other kinsman of the maiden, though at that time defeated in battle, (for such is the described form of this marriage,) yet following the practice of the *Daiva* ceremony, or of marriage in general, give a nuptial portion to his daughter, through natural affection or from other motives, then this rule is applicable to that case.

'Received by a woman at the time of her marriage:' the supposition that the husband succeeds to all the separate property of his wife married by one of the five ceremonies called *Bráhma* and so forth, at whatever time it may have been received by her, is thus confuted; for it is shown, that the father and mother only succeed to wealth received at the time of the marriage in the form called *Ásura* and the rest, since this coincides with the text of YAMA; and by parity of disproof it should be established, that a husband only succeeds to wealth received by *his wife* at the time of the marriage in the form called *Bráhma* and the rest. Accordingly, the accurate construction of the text of MENU is, "her wealth given on the marriage called *Ásura;*" and in the text immediately preceding (DII), the same construction should be followed by fetching the word "given" from the subsequent verse. Such is the opinion of JÍMÚTAVÁHANA and the rest.

DV.

YAMA:—Wealth which is given on the marriage called *Ásura*, or on either of the *two* others, *goes to the parents of the woman.*

RAGHUNANDANA specifies the time of marriage: 'the period of the nuptials is the space from the beginning to the close of the nuptial ceremony; it commences with the oblation for increase *of prosperity*, and ends with a return of the salutation:' it is so expressed in the *Viváha tatwa.* Here the implied meaning is, from the first to the last member of the ceremony: hence, if the oblation for increase *of prosperity*, or any other part of the rites, be not performed, there is no objection.

But others say, "marriage" in the text above cited (DV) is expressed in the seventh case with a general or illustrative meaning; as in the phrase "he goes a-begging." Consequently, whatever is given to a damsel on account of her nuptials, is wealth given on her marriage (*yautaca*); such is the obvious sense: and that alone should be received by her husband at a subsequent time. Accordingly, wealth given on the day of marriage, before the oblation for increase of prosperity, is a present given on her nuptials. Does it not follow, that wealth which a kinsman returning from a distant country, but unable to attend on the day of the ceremony, gives when four or even five days are elapsed since the nuptials, would be a present given on her marriage; but wealth previously demanded being delivered, on the very day of marriage, by a kinsman casually uninformed of it after the oblation for increase of prosperity, would not be wealth given on her marriage; and

her husband would have no right to it *after her demise?* This is admissible; for the expression of CHANDESWARA, "received at the time of marriage," may be taken in a lax sense, as signifying a present given, by reason of her nuptials, on any other day whatsoever.

If a woman having no issue *male or female*, including daughter's sons, leave a husband who has a son by another wife, which of them shall inherit her estate? RAGHUNANDANA replies, the son by another wife is first heir; on failure of him, the son of such a son; in default of him again, the husband and the rest. The reason is, that her husband and others do not offer a funeral cake, in which the late proprietress can participate: that is also noticed by the commentator; 'the son of another wife, and the son of such a son, have both an equal claim, because *others do* not offer, in the double set of oblations, a funeral cake which the proprietress may share.'

The superior claim of the husband and the rest, in competition with his son by another wife, is thus denied; because they do not offer, in the double set of oblations, a funeral cake, which the proprietress may share: it is not thereby shown that the son of another wife has a superior claim. And thus other reasoning must be brought for the succession of a son by another wife, in preference to the surviving husband: such, for example, as the following; since the son of any one wife is figuratively called, in a text of MENU, son of all the wives *of the same husband,* his son should also be figuratively termed grandson of all the wives.

DVI.

MENU:—*Thus,* if among all the wives of the same husband, one bring forth a male child, MENU has declared them all, by means of that son, to be mothers of male issue.

It should not be objected, that, were it so, a brother's son would alone inherit the property left by a man, although a daughter or her issue, and brothers and the rest, were living; because a nephew is figuratively called son *of all the brethren* in a text of MENU (CCLXXVI). It would be irregular to deduce the order of succession from reasoning, whilst *another* order of succession, expressly ordained by law, is found in the text of YÁJNYAWALCYA (CCCXCVIII); but, in this case, no other series of claims having been expressly ordained to bar that which is deduced from reasoning, this order of succession, consistent with the reason of the law, should be affirmed.

To all this the answer is, No; for VRĬHASPATI, declaring that no decision should be made inconsistent with the reason of the law, and the order propounded by YÁJNYAWALCYA being followed, reasoning, founded on the figurative appellation of son, cannot establish a right of succession. Accordingly, even though the son of a sister, and others also, be in effect figuratively named sons, under the text of VRĬHASPATI (DXIII), still the husband and the rest shall inherit in preference to them.

To this again lawyers reply, the son of another wife may succeed *to the estate of a woman,* although her husband survive, because he offers the funeral cake in the anniversary obsequies. In respect of separate property left by a woman, the benefit conferred by offering the funeral cake at anniversary obsequies, is a valid ground of inheritance; for women are not chiefly considered in the funeral cake which is offered with the double set of oblations: but in respect of property left by a man, the comparative claim of inheritance

follows the comparative connexion of the funeral cake offered in the double set of oblations: it is therefore so established in this case.

Still, how can the grandson of another wife inherit the estate of a woman in preference to her husband? It should not be answered, RAGHUNANDANA only admits his claim after the husband's. That author declares the succession of the brother-in-law, on failure of sons and other heirs down to the husband. But this may be questioned; *for*, the right of a son, of a daughter's son, and the rest, is not declared to be founded on benefits conferred by the gift of the funeral cake in the double set of oblations; since the commentator does not consider a daughter's son and the rest as issue *of the maternal grandmother*, and no other special text is found: but a law concerning the succession of a son by another wife will be cited.

"It is ordained to become the property of her father and mother:" here also the mother is first heir, and the father next; for such is the order expressed in the text of MENU. There can be no association *of terms*, where the word "and" or other connective particle is wanting; for association cannot be introduced in *the midst of* successive order: the particle "or" in the text of DÉVALA (CCCCLXXXIX) suggests the denial of association; and that is shown in the single text of BAUDHÁYANA.

DVII.

BAUDHÁYANA:*—Of an unmarried woman deceased, the brothers of the whole blood shall take the inheritance; on failure of them, it shall go to the mother; or, if she be not living, to the father.

'That again which has been received by a woman after marriage, from 'the family of her father, mother, or husband, shall go to her brothers, as 'ordained by the following text:'—

DVIII.

YÁJNYAWALCYÁ:—If a married woman die without issue, her nearest paternal or maternal kinsmen inherit whatever her own family had given her, the perquisites allowed by her husband, and whatever she received after marriage.

"Whatever her own family had given her;" what was bestowed on her 'by her father and mother: their sons, *meaning* her brothers, are the nearest '*kinsmen*, paternal or maternal, *who shall inherit*, as ordained by CÁTYÁYANA.'

JÍMÚTAVÁHANA.

DIX.

Vriddha CÁTYÁYANA:—Whatever immovable, *and of course whatever movable*, nuptial property has been given by parents to their daughter, shall always go to her brother, if she die without issue.

"Whatever she received after marriage," from the family of her father, mother, or husband, is called a gift subsequent. In like manner, the expression "whatever her own family had given her," may suggest any thing bestowed on her by her parents before marriage: however, it does not comprehend that which her brother gave her, or which she herself acquired, before marriage: an heir being therefore sought for such property, her brother

* The text is, in other compilations, attributed to NÁREDA. T.

should be considered as having the sole right. Since it is mentioned in the same place, JÍMÚTAVÁHANA and the rest must of course admit the right of her brother, on failure of her husband, to inherit wealth acquired by a woman during coverture. Brothers alone shall take the perquisites, both those which are defined by VYÁSA, and those which are explained by CÁTYÁYANA. So JÍMÚTAVÁHANA and RAGHUNANDANA; SÚLAPÁNI also holds the same opinion. But CHANDÉSWARA says, the perquisite which was received when the damsel was given in marriage, is here determinately meant. He therefore considers the text of SANC'HA as relating to the case where the maiden dies immediately after receiving the nuptial present.

DX.

SANC'HA, after premising "may take back:"—The lover *may take back* his nuptial present on the death of his betrothed mistress.

JÍMÚTAVÁHANA does not concur in that opinion; for, such a perquisite or nuptial present being taken by her father, does not become the property of the woman. If it be said, this text relates to that wealth only which is given exclusively to the maiden as a nuptial present on the bridal procession; the answer is, there is no authority for such an inference; and it would be difficult to find an heir for the perquisites mentioned by VYÁSA and by CÁTYÁYANA. Again; it is suggested, by the expression "what was received when the damsel was given in marriage," that he who gives away the damsel takes that present.

DXI.

GÓTAMA:—First the whole brothers take the perquisite of their sister; after them (some say before them) the mother.*

This last is the opinion of other legislators: thus HELÁYUDHA. The meaning is, after the mother, that is, after her death. If the mother and father be living, it goes to those two. So the *Dípacalicá*.

Some lawyers thus interpret the text: the whole brothers take the heritage of their sister on failure of the mother and father, (some legislators say before them;) that relates to other property except perquisites, and this term bears a general sense: the heritage of a maiden goes to her parents, on failure of whole brothers; the estate of a married woman goes to her whole brother, on failure of her parents: for the sake of this double case, it is added, "some *legislators* say."

But JÍMÚTAVÁHANA explains the text, after whole brothers it goes to the mother; for that coincides with the text of BAUDHÁYANA (DVII): "some say before them;" that is an opinion of other *legislators*.

Consequently, the several property of a sister received at any other time but her marriage, goes to her brother; such is his opinion. But, according to this interpretation, "unmarried women," in the text of BAUDHÁYANA, is unmeaning; and the other opinion cited by GÓTAMA is most inadmissible and improper. In a gloss on the text of BAUDHÁYANA, the word 'damsel' is supposed in the *Retnácara* to signify unmarried woman. But VIJNYÁNÉSWARA, in his gloss on the text of YÁJNYAWALCYA, expounds "kinsmen," her husband and the rest; a distinction, *he adds*, will be noticed from other texts: consequently, her estate goes to her kinsmen on failure of

* This text is attributed to CÁTYÁYANA by the compilers of the *Vivádárnava sétu*, and the word father is interpolated by them: with that difference only they interpret the text as I do, in conformity with the gloss of JÍMÚTAVÁHANA. T.

issue; and in that case, wealth received at *Bráhma* nuptials and the rest goes to her husband; but, in other forms of marriage, it devolves on her parents.

Thus the heir of the several sorts of property held by a woman who leaves no issue, is determined; on failure of her father and mother, and of her brother, all her property goes to her husband, under the text of CÁTYÁYANA. JÍMÚTAVÁHANA.

DXII.

CÁTYÁYANA:—On failure of her parents and brothers, what she received from her kinsmen as a gift descends to her husband.

The grandson of another wife shall in this case inherit, say some lawyers. But RAGHUNANDANA holds, that, if she die without issue, the husband alone has a right, under the text of DÉVALA (CCCCLXXXIX), to the property of his wife bestowed on her by him after marriage; but her brother alone shall inherit, under the text of *Vriddha*, CÁTYÁYANA (DIX), what was given her by her father and mother. It should not be objected, whence is it deduced, that wealth given by her husband is meant in the text of DÉVALA? Since *Vriddha* CÁTYÁYANA ordains the succession of her brother to her property given by her father and mother, it appears that the text of DÉVALA must relate solely to wealth given by her husband, for that completes the sense; but her brother alone succeeds to that which was bestowed on her by her father and mother. Since the word "that," in the text of YÁJNYAWALCYA, denotes the female property before mentioned, kinsmen, that is, brothers, are truly entitled to such wealth only as is different from the nuptial present subsequently noticed by YÁJNYAWALCYA; does not the text of DÉVALA, concerning the succession of a husband, also relate to wealth given at the time of marriage? If this be proposed, the answer is, No? for VIJNYÁNÉSWARA, author of a commentary on the code of YÁJNYAWALCYA, explains "kinsmen," husband and the rest. This opinion of RAGHUNANDANA appears consistent with common sense.

If her husband be not living, shall or shall not her brother obtain wealth given her at the time of her marriage in the form called *Bráhma* or the like? It should not be answered, the text, which propounds the succession of her brother, must necessarily be referred to other property, for the sake of obviating the contradiction to the text of MENU and the rest (DII); and thus her brother has no claim to the wealth given at *Bráhma* nuptials or the like, because no text ordains his succession. Were it so, the brother's son, who succeeds to all property indiscriminately on failure of heirs down to the son of a husband's sister, would be heir, under the text which will be cited from VRIHASPATI, although a brother be living; which would be inconsistent with common sense. To the question thus proposed, the answer is, as the husband inherits, on failure of brothers, that wealth to which brothers have a demonstrated title (DXII), so a brother inherits, on failure of the husband, wealth to which husbands have a demonstrated title. Consequently, texts showing the succession of husbands and the rest are adverse to the claims of others while they are actually living, but do not contradict the succession of others in order upon failure of them: and thus, it must be affirmed by RAGHUNANDANA, that, in default of her husband, a brother alone inherits wealth given to a woman by her husband, although the son of her sister-in-law be living. This is actually confessed by JÍMÚTAVÁHANA. Hence the text above cited (DIX) relates to wealth given by her father and

the rest; and indirectly to property given by her husband, if she survive him; and to wealth received at the time of her marriage, if she die after her husband.

On failure of the husband and the rest, *the following text is adduced*:—

DXIII.

VRĬHASPATI:—The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the mother of a wife, and the wife of an elder brother, are declared equal to a mother.

2. If they leave no issue of their body, nor the son *of another wife of the husband*, nor the son of a daughter, nor the *son's* son *of another wife*, the sons of their sisters and so forth *shall therefore* inherit their property.

"Issue of their body;" son, daughter, and the rest, before mentioned. "Son;" the offspring of another wife of the husband. "Son of a daughter;" the daughter's son of another wife, who is the subject of a text above cited (CCCXCV). "Nor the son of him;" the son of another wife's son; but the daughter's son of another wife of the husband is debarred from succession, because he confers no benefits. Consequently, the son and son's son of another wife inherit before the sister's son and other six heirs; and the daughter's son inherits before the husband, as his own daughter's son, and as offspring of a *Bráhmaní* daughter; but after him, according to JÍMÚTAVÁHANA and the rest, as abovementioned.

But others *thus interpret the text*: a son begotten in lawful wedlock, a daughter's son (and of course a daughter); his son, that is, the son of a son, or grandson in the male line; and the husband and other heirs ordained by express texts, who are here understood from the connection of the particle "nor;" on failure of all these, *we say*, a sister's son and the rest shall inherit in the order which will be mentioned, although the brother, the husband's father and the rest, and the son of another wife of the husband and other claimants be living. Neither is the term "begotten in lawful wedlock" superfluous as an epithet of son: for the son of another wife, and others, who are figuratively called sons, must be excepted. Nor should it be objected as a fault, that "son," to which the epithet is referred, becomes superfluous. That form of expression occurs in other texts (*for example*, "A son begotten in lawful wedlock, and one begotten on the wife by a kinsman, both share the father's wealth"), and it excludes a remoter descendant of the body. Nor is it inconsistent with common sense that the son-in-law should inherit, although the son of another wife of the husband be living; for it must be borne, like the succession of a son-in-law, although the brother or the husband's father be living. As the husband of a daughter is by VRĬHASPATI figuratively called son, so is the son of another wife metaphorically called so by MENU. The *younger* brothers of a husband, and the rest, as well as the son of another wife, being considered as sons, who shall first inherit? On this question, if it be said, the son of another wife ought to inherit first, in right of superior benefits conferred by him, because he gives three principal funeral cakes which should be offered by the son of a proprietor; the answer is, that is admissible; but he cannot claim succession before the husband, since he derives his title through him. It should not be objected, that the husband's brother and the rest, deriving their title through the father of the

husband, would not inherit while the father-in-law is living. The succession of the husband's father and the rest is not deduced from any other text. Nor should it be argued, that he would have a prior title of inheritance, because he has a right to perform the obsequies before the husband. Such a maxim has been obviated, since the title of a sister's son and the rest to take the heritage has been propounded, even though the father-in-law, or other person qualified as a *sapinda* to perform the obsequies, be living. The husband's brother and the rest, as well as his son by another wife, being equally considered as sons, there is no authority to prove that one should inherit before the husband, the rest after him. Nor should it be argued, that the son of another wife being figuratively called son, when treating of those who are secondarily so called, it is therefore acknowledged that he redeems *his stepmother* from the hell named *put;* not *so*, these sons of a sister, and the rest, who are figuratively called sons, merely that they may take the heritage; and thus they are not equal to a son of another wife. The husband confers many more benefits than he. As for the remark, that her own son is superior to all others, solely because he delivers her from the hell called *put*, that is futile; for, were it so, her own son and the child of another wife would have equal claims *to her inheritance*. If it be said, her son has precedence, because he performs both offices of redeeming *her father and husband* from the hell called *put*, and thereby benefits the family of her own father and that of her husband; the answer is, since the son of her sister married to the same husband with herself also performs both offices, he would have an equal claim with her own son, and would have precedence above the issue of any other wife of the husband; and if her own son be acknowledged superior to both those who discharge the debt of offering a funeral cake, to be shared by her in the double set of oblations, it cannot be affirmed that his title is superior, solely because he delivers from the hell called *put*. Again; whatever claim the son of another wife may have, it is certainly true that no argument exists to prove that the grandson of another wife inherits before the husband. These authors so expound the law.

We resume the subject. Have the sons of sisters and the rest a coordinate title, or a successive one? Not the first; for, association should not be assumed if successive order be possible; and the sons of a sister, and others, of whom the designations are incompatible, ought not to be associated. They should therefore succeed in order as enumerated. Accordingly the son of a sister may be the first heir. It should not be objected, that the reason of the law prevents this, because the succession of a son-in-law, while a brother of the husband exists, is contrary to rule. Since a son-in-law may regularly succeed, although an elder *brother of the husband* be living, he may also regularly succeed in preference to a younger *brother of the husband;* but if the text be revered, the order of succession stated therein must also be respected. Some authors so expound the law. But that is wrong; for, it is improper that one who confers less benefits should inherit, while another who confers greater benefits, other than that which is afforded to the woman herself by means of obsequies, is living.

Since her husband's elder brother performs obsequies as a *sapinda*, and the younger brother of the husband confers equal benefits, a son-in-law and the rest would not inherit while either of these exist: this should not be affirmed. The younger brother of a husband also presenting the funeral cake as a *sapinda*, he is again mentioned as a son *by fiction of law*, to show that his oblation of the funeral cake is indispensable: and thus it follows, that the husband of a daughter, and others, mentioned in a single text as

heirs of a mother-in-law who leaves no issue, and so forth, must necessarily offer the funeral cake. Consequently, the necessity of conferring benefits on the woman herself is the sole cause why a son-in-law and the rest rank above the elder brother of a husband. It is therefore demonstrably just, that a son-in-law and the rest should inherit, although the elder brother of the husband and other heirs be living.

But others hold, that a son-in-law does not inherit if the elder brother of the husband be living, for he is not a kinsman connected by the funeral cake; but *he inherits* on failure of the husband and other heirs who are expressly ordained by law, the succession of those who confer benefits being deduced from reasoning. Among *sapindas*, the younger brother of the husband has the first claim; next, the sons of her husband's elder and younger brothers; on failure of them, the son of the husband's sister; after him, in default of kinsmen within the degree of *sapinda*, or of *samánódaca*, including fourteen persons ascending and descending, the right of her father's kinsmen being *in that case* celebrated, the sons of her brother or sister inherit; next, on failure of kindred in the father's or mother's families, the husband of a daughter; and, lastly, the highest of twice-born men.

That is denied; for, in the line of *sapindas*, there is no proof that the husband's younger brother shall inherit first, although his father, who is nearer of kin, be living; nor, in the line of her father's kindred, that the sons of her brother or of her sister shall first inherit. If it be said they are preferable heirs, because they are her sons *by fiction of law;* it must be remembered, that all *sons, secondarily so called*, take the heritage immediately after a true son. Hence the method approved by JÍMÚTAVÁHANA should be followed. It may be thus stated: the order of succession corresponds with the degree of benefit conferred; first, the husband's younger brother inherits, because he offers a funeral cake to her and to her husband, and presents oblations to three persons to whom cakes were to be offered by her husband, and to two persons to whom they would have been offered by her son. After him, the sons of her husband's younger and elder brothers inherit together; because they offer the funeral cake to her and to her husband, to two persons to whom oblations would have been presented by her son, and to two persons to whom funeral cakes were to be offered by her husband. On failure of those, the son of her sister *inherits*, because he offers the funeral cake to her, and to three persons, the maternal grandfather and the rest, to whom oblations would have been presented by her son. After him, the son of her husband's sister succeeds, because he offers the funeral cake to her, and to three persons, her father-in-law and the rest, to whom oblations were to be presented by her husband. Since the husband has a weaker claim than the son, it must be inferred, that he who performs rites incumbent on her husband, has a weaker claim than he who fulfils duties incumbent on her son: this order of succession is therefore right. So JÍMÚTAVÁHANA and RAGHUNANDANA.

But the son of her husband's sister also performs rites incumbent on her son, for he performs the *śráddha* for the paternal grandfather and other ancestors of her son, and of his father. Yet the son of her husband's sister, performing rites incumbent on both, has not a stronger claim than he who merely performs those which were incumbent on her son. It should not be answered, that, according to RAGHUNANDANA, her sister's son has a stronger claim than the son of her husband's sister, because he satisfies six ancestors of her son, including the maternal grandmother and the rest, while the other satisfies four ancestors of her son, the paternal grandfather and grandmother

and the rest. The son of her husband's sister is superior, because he satisfies six ancestors of her husband, namely, his father and the rest, and his mother and so forth. Nor should it be argued, *on the other hand*, that his claim is completely established in right of his satisfying those six persons. He who contents four persons who ought to be satisfied by her son, is inferior to him who contents six persons who ought to be satisfied by the same.*

As for the observation, that a sister's son performing rites incumbent on a brother has a superior claim, because a brother has a stronger title under a text above cited (CCCCXCIII 2), that is not apposite in the case of wealth received at the time of marriage in the form called *Bráhma* and so forth; for in such instances the husband has the stronger title.

Since the line of maternal ancestors is not chiefly considered, the son of the husband's sister, offering the funeral cake to the son's paternal ancestors, ought to be first heir, under the rule, that, on the competition of chief and subordinate *claimants*, the office devolves on the chief person. Again; the son of the husband's sister also confers favours on the husband, who is one of two persons constituting one body. This also may be objected.

On failure of him, the brother's son inherits *the separate property of the woman*, because he offers two funeral cakes, which would have been presented by her son, *one* to the maternal grandfather, the other to the maternal great-grandfather, and because he also offers the funeral cake to the woman herself. In default of him, the husband of her daughter *inherits*, because he offers her own funeral cake. JÍMÚTAVÁHANA adds, 'on failure of these six again, it must be understood, that her husband's father, and elder brother, and so forth, inherit her property, the succession devolving on the nearest kinsman related by the funeral cake.' Consequently, on failure of heirs, including the husband of her daughter, the succession devolves on *sapindas*; and the father of her husband is first heir to her estate. Others say, the grandson of another wife of her husband has a preferable claim, and next the great-grandson of another wife, because they are heirs of her husband. Immediately after her father-in-law, the elder brother of her husband *inherits*; next, her father-in-law's great-grandson in the male line, because he is the nearest *sapinda*: after him, the paternal grandfather of her husband, or his issue; next, the paternal great-grandfather of her husband, or his offspring; and so forth, including fourteen persons ascending and descending: after these, her kindred on her father's side, as far as the tenth person; after them, the family of her mother; and, lastly, the king *takes the estate*, except the property of a *Bráhmaní* woman. This brief exposition *may suffice*.

The ground of this *order of succession* is the performance of obsequies; for it is shown, in the case of property left by a man, that heirs succeed in right of benefits conferred. On this subject,

DXIV.

The *Vishnu purána*:—A son, a son's son, the son of a grandson, or like them a brother or his offspring, or a *sapinda* or his issue, become entitled, O king! to perform *funeral* rites:

2. On failure of all these, the offspring of a *samánódaca*; or *after them*, kinsmen on the mother's side, connected by the funeral cake, or by oblations of water.

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* I suspect an error. As the text stands, the argument is inconsistent. T.

3. But if both families be extinct, the rites, O king! must be performed by women; or the obsequies for the deceased must be celebrated by intimate companions.

4. Let the king cause obsequies to be performed for him who leaves no kinsmen nor wealth.

The same:—By the *sapindas* and *samánódacas* of the father and mother, by intimate companions, or by the king, who takes an escheat,

6. The first rites must be performed; but the last rites shall only be celebrated by sons and the rest.*

First, a brother; next, his offspring: the apposition of the terms is in the sense of association; 'a brother with his offspring:' and the descendants of a brother perform obsequies according to *the degree of* proximity. Next, a *sapinda*, namely, a father and the rest, and their issue, including females, *that is*, the wife of a son and so forth. After them, the offspring of a *samánódaca*, as mentioned in a text of law, "the relation of the *samánódacas*, or those connected by an equal oblation of water, ceases with the fourteenth person." Next, *sapindas* and *samánódacas* on the mother's side. If both families, that of the father, and that of the mother, be extinct, obsequies shall be performed by women, meaning daughters of the family and the rest; on failure of all these, by intimate companions, that is, by friends; in default of them, by the king; *but* since he cannot officiate in person, he must cause obsequies to be performed by the intervention of some man equal in class.

"The last rites," subsequent to the first annual obsequies, that is, *other* annual *śráddhas* and so forth. In like manner, women also requiring obsequies, the right of performing for them ceremonies relative to another world should follow the same order. But in this case the terms "a brother or his offspring," are not apposite; for these are not *sapindas of a married woman*: the order must therefore be understood with the omission of them. On failure of kindred within the degree of a *samánódaca*, the father and the rest (meaning his kinsmen) *perform obsequies*, under the text *above cited* (DXIV 5). So RAGHUNANDANA; but according to others, because reasoning shows the kindred of her father to be more venerable than those of her mother. On failure of them, the kindred of the mother, and the most exalted of twice-born men, are qualified to perform obsequies for the deceased, under the text, "on failure of them, the highest twice-born man." They inherit the estate because they confer benefits.

Although women, included among these *remote heirs*, may perform funeral rites for the deceased, under the text of the *Vishnu purána*, "on the anniversary of decease, the last rites may be performed even by women;" they do not share the property, for a text expresses, "distribute not wealth among women, ignorant men, and such as neglect their duties."

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* The first funeral ceremony is the cremation of the corpse; the middle rites consist in gathering the ashes, and performing the obsequies for a person recently deceased: these extend to the first annual *s'ráddha*: the last rites are the monthly, annual, and other obsequies for ancestors long since dead. T.

Others hold, that the claim of a sister's son and the rest follows immediately after that of the woman's own issue, because they are declared equal to a son: their claim, as before, *is regulated* by the degree in which they perform rites incumbent on a son; else there could be no certainty when these persons, not mentioned in the *Vishnu purána*, would have a right to perform funeral rites.

Raghunandana affirms, that, on failure of heirs, including kinsmen bearing the same family name, the father is first qualified to perform the funeral rites for a woman; on failure of him, her brother; next, the son of her own sister, of her husband's sister, of her brother, and, lastly, the husband of her daughter, under the text of 'Sátátapa: *after these*, the maternal uncle, and the pupil of her husband, claim that right; and, last of all, other kindred of her father.

DXV.

'Sátátapa:—A maternal uncle *shall perform the obsequies* of his sister's son, and a sister's son the obsequies of his maternal uncle; *a son-in-law, the funeral rites* of his father-in-law; *a pupil, those* of his spiritual teacher; *a grandson, the obsequies* of his maternal grandfather.

2. The funeral cake must be offered to their wives and sisters, to their mothers and fathers: this is a rule settled by law-giver versed in holy writ.

According to his opinion, a similar order should be understood in succession to property. Such is the inheritance of separate wealth left by a married woman: however, land given by her husband does not devolve on the heirs of her separate property, but on those of her husband's, under the text above cited (CCCCLXXVII 2); for this follows of course, since the precept would be unmeaning, were the heirs of the woman intended: the legal heirs of her husband must therefore be understood. This text is expounded by authors as relating to an estate devolving on a wife *by failure of male issue*. Wealth possessed as property in right of relation or affinity, is heritage in the acceptation of the word (*dáya*): now it is determinately connected with the condition, 'after the title of a former owner has expired:' hence "a gift (*dáya*) or heritage *received* from her husband" in effect signifies wealth received in right of her connexion with him. While he lives, it must be preserved *with frugality*, not dissipated without his assent; but after his death she has independent power over it: however, though she have such power, her enjoyment of it is alone authorized, not lavish expense at pleasure. Such is the virtual sense; and this relates only to immovable property, according to the *Retnácara*. By the expression in the subsequent verse, "strictly obedient to her spiritual parents," it is suggested that the husband of the woman is dead; from the term "childless" it follows, that she is become owner of the estate: and this text is propounded by Cátyáyana incidentally. In a former precept (CCCCLXXV 3) a woman had been declared to have independent power over her own separate property, even though it should consist of lands and houses: recollecting the other sorts of wealth held by a woman as her property, the legislator subjoins this text to regulate her dependence in respect of such wealth.

Must not this text relate to the peculiar property of women, since it is placed under that title? It should not be answered, were it so, the word "childless" would be unmeaning. It is connected with the terms, "strictly obedient to her spiritual parents:" thus the meaning is, if a son be living, she is subject to his control; on failure of him, she must strictly obey her spiritual parent. To the doubt thus proposed the answer is, No; for a question requiring solution shall prevail before the title under consideration, in a matter which bears the stamp of scripture.* Thus the independent power of a woman over her peculiar property technically so called, which she possesses as her own, having been propounded, a question arises, what is the rule in respect of other sorts of property held by her as her own? In fact it must be affirmed, that the legislator, speaking of lands and houses (CCCCLXXV 3), does intend other immovables besides such as her husband gave her; else it would contradict NÁREDA (CCCCLXXVI). Again; a question arises, whether the rule be the same in respect of immovables given by her husband, and in regard to other sorts of property held by a woman as owner thereof? In answer to the question, what is the rule respecting immovables given by her husband, and other sorts of property possessed by her? this text is cited; and the gift or heritage (*dáya*) of her husband there signifies his wealth, that is, the property of the wife formerly belonging to him. It follows, from the epithet "*received* from her husband," that she has independent power over wealth devolving on her from her father and the rest by failure of nearer heirs.

But MISRA holds, that she is also subject to control in respect of immovable property descending to her from her husband through the intervention of her son, in other words, property of a son devolving on his mother. JÍMÚTAVÁHANA and the rest affirm, that a woman is subject to control in respect of wealth anyhow devolving on her alone. Thus "childless," in the text above cited, supposes property descending to her by failure of nearer heirs. Consequently, immovables, even though given by her husband, shall be taken by *his* heirs only.

A husband having independent power, by the text of CÁTYÁYANA (CCCCLXX), over wealth acquired by his wife during coverture, and a father being also owner of wealth earned by his unmarried daughter, (for the word son, in the text of MENU, Book III, Ch. I, v. LII 1, signifies both son and daughter, since it is not determinately restricted to the *masculine* gender;) what is the rule concerning property acquired by a widow? It should not be answered, her brother is sole heir, because none can contest his claim, since her husband, the *only* obstacle to his succession, is dead. The brother is pronounced heir to that wealth only which was given by her parents (DIX). To the question thus proposed, the answer is, No; for it has been already mentioned, that the husband, mother, and brother are, in every instance, heirs on failure of opponents.

Again; according to the opinion of those who contend that the legal heirs of the daughter succeed, on her demise, to the estate of her father which had devolved on her, wealth descending to a woman in default of nearer heirs is her peculiar property. Even in that case, the rule of decision is this: the mention of the six-fold property of women, established by authors

* And therefore a text should be so expounded as to satisfy doubts which may arise, instead of adhering strictly to the subject of the title under which the text is placed. T.

to be an exception of fewer distinctions, relates to property over which they universally have independent power by the tenor of the precept. For the estate of her father, though devolving on his daughter after her marriage, becomes the property of her husband, since he is declared by the text above cited (Book III, Ch. I, v. LII 1) to have dominion over *all* her property excepting the six sorts specified: but that precept does not relate to the peculiar possessions of a woman, since it is opposed by a separate text. Thus wealth received a few days before marriage is not the peculiar property of a woman in the technical acceptation of the term, although she have independent power over it. In like manner, since the husband has in some instances dominion over wealth acquired by his wife, a widow has not universally an uncontrolled power over her own acquisitions in general, although she sometimes have such power. Here again, although the husband have a title in the wealth acquired by his wife during coverture, his ownership is subject to the control of his wife; after his death, it shall be enjoyed by her alone; but, if she die *before him*, it shall be taken by the legal heirs of her husband: the regular claimants of a woman's separate property have no right in this instance. If her husband die first, her *acquired* wealth becomes the sole property of this woman, who earned it; in that case, it shall be taken by legal heirs of her peculiar effects: but if the wife die first, her wealth becomes the sole property of her husband, and shall therefore be taken, *after his demise*, by his legal heirs. If partition be made during the life *of the married pair*, such wealth shall be divided between them, according to the opinion of those who contend for partition between husband and wife: the sons obtain no share of it, since no text ordains *their participation*. This should be admitted, because legislators have delivered no other rule concerning wealth acquired by women, because the husband is declared to have dominion over it, and because the father and son are observed to share the wealth which is acquired by the son. Thus some authors expound the law.

But, according to JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, the wife is sole owner of wealth acquired by her even during coverture; yet she has not independent power over it so long as her husband lives: *for* the negative in the text of MENU (Book III, Ch. I, v. LII 1) conveys the sense of imperfection. Consequently, they have no wealth exclusively their own; and the imperfection *of their property* consists in the want of uncontrolled power. It must be therefore understood, that the legal heirs of a woman's peculiar property succeed also to this wealth. Although it be suggested that the same should be likewise affirmed in respect of her father's estate devolving on a daughter *by failure of nearer heirs*, still we do not investigate this *claim*, because it is asserted by JÍMÚTAVÁHANA and RAGHUNANDANA, that the legal heir of her father succeeds to that estate.

A daughter may at pleasure give away to any person whomsoever the exclusive property of her mother, which has devolved on her; after her death, the daughter's son-in-law and the rest shall obtain that *which has not been aliened*. It should not be argued, that a daughter is only permitted to enjoy for life the peculiar property of a woman, *which she has inherited*, like the estate left by a man *to which she has succeeded*. That has not been asserted by JÍMÚTAVÁHANA; and no reasoning supports it.

THE END.

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☞ *The Index has been re-written for the Third Edition of this work. The Roman numerals denote the volume and the other the page.*—Publisher.

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